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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

JOHN W. WILLIAMS and WINIFRED WILLIAMS, husband and wife,

Petitioners,

vs.

TUCSON UNIFIED SCHOOL DISTRICT NO. 1 OF PIMA COUNTY, a political subdivision of the State of Arizona; and TUCSON EDUCATION ASSOCIATION, an Arizona corporation,

Respondents.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF ARIZONA

PETITION FOR WRIT OF CERTIORARI

CATHERINE M. McCRACKEN
BUSBY & McCRACKEN, P.C.
1241 East Prince Road
Tucson, Arizona 85719
(602) 293-0344

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QUESTION PRESENTED FOR REVIEW

Whether the Arizona Supreme Court erred when it denied review of the Arizona Court of Appeals' decision which erred when it affirmed the decision of the Superior Court of the State of Arizona holding:

1. That TUCSON UNIFIED SCHOOL DISTRICT NO. 1 OF PIMA COUNTY, (hereinafter, "TUSD"), a political subdivision of the State of Arizona, can enter into and enforce the terms of a collective bargaining agreement or "Consensus Agreement" with TUCSON EDUCATION ASSOCIATION, (hereinafter "TEA"), an association to which not all teachers in TUSD belong and which limits access to negotiations and to the grievance procedure through TEA and at its request only without denying JOHN WILLIAMS, (hereinafter "WILLIAMS"), a nonmember teacher, due process of law through depriving him of rights of employment where there is no statutory authority allowing delegation of the School Board's authority to establish a collective bargaining agreement.

2. That TEA can be exclusive bargaining representative of all teachers in TUSD without the requirement of a fiduciary duty being imposed and that the absence of a fiduciary duty did not deprive WILLIAMS of due process of law.

3. That the acts of TUSD and TEA in establishing and instituting the Consensus Agreement did not deprive WILLIAMS of his right to due process of law or constitute an illegal delegation of TUSD's authoirty to TEA.

LIST OF PARTIES

The parties to the litigation are:

1. JOHN W. WILLIAMS and WINIFRED WILLIAMS, husband and wife, plaintiffs, appellants, and petitioners herein;

2. TUCSON UNIFIED SCHOOL DISTRICT NO. 1 OF PIMA COUNTY, (hereinafter TUSD), a political subdivision of the State of Arizona, defendant, appellee and respondent herein;

3. TUCSON EDUCATION ASSOCIATION, an Arizona corporation, defendant, appellee, and respondent herein.

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REFERENCE TO THE OFFICIAL OR UNOFFICIAL REPORT

The Arizona Supreme Court denied review of the matter, as indicated in Appendix A20. There is no official or unofficial report of the decision denying review.

The Arizona Court of Appeals rendered its dismissal of the Petition for Rehearing by Order of the Court which is not reported. The dismissal of the Petition for Rehearing is contained in Appendix A21-22.

The Arizona Court of Appeals rendered its decision on the case as an unpublished memorandum opinion. The opinion is contained in Appendix A1-19. The decision is not officially or unofficially reported. The Court of Appeals' decision upheld the Superior Court judgment entered April 8, 1983, a copy of which is contained in Appendix "D", pages A23-27.

STATEMENT OF JURISDICTION

This Court has jurisdiction over this Petition for Certiorari from the September 13, 1984 decision of the Arizona Supreme Court denying review of the memorandum decision of the Arizona Court of Appeals dated March 22, 1984. This Court has jurisdiction, pursuant to 28 U.S.C. §1257(3), which provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question on the ground of it being repugnant to the Constitution, treaties or laws of the United States or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment of the Unites States Constitution is involved in the case and states in pertinent part:

> "Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ncr shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

A.R.S. §15-441 provides:

> "The Board of Trustee shall prescribe and enforce rules for the government of the schools, not inconsistent with laws or rules prescribed by the State Board of Education."

A.R.S. §15-443 provides:

> "The Board of Trustees may, at any time, employ and fix the salaries of teachers...for the succeeding year."

STATEMENT OF FACTS.

TUSD is a political subdivision of the State of Arizona engaged on the provision of education and is an employer. TEA is an Arizona corporation and a labor organization representing certain certificated employees of TUSD. JOHN WILLIAMS (hereinafter, WILLIAMS) was, at the time of the complaint, and at all time material thereto, a certificated employee of TUSD, WILLIAMS, and was not a member of TEA. WINIFRED WILLIAMS is the wife of WILLIAMS and is involved only in relation to the community.

Arizona has no statutory scheme authorizing a system for union representation of local government employees. TEA and TUSD entered into a Consensus Agreement or collective bargaining contract on May 15, 1980 which was effective for the period July 1, 1980 through June 30, 1982. The entire Consensus Agreement is attached in Appendix F, pages A30-70. Excerpts of the Consensus Agreement are quoted where necessary. Article 4-1 provides:

> "The District recognizes the Association as the exclusive representative of all teachers in the District and will negotiate terms and conditions of employment with the Association in accordance with the following procedure:"

The Consensus Agreement further provides in Article 3-8:

> "A. Upon request of the Association or the District, the Association and District agree to meet and consult upon matters of concern.
>
> "B. The District reserves the right to consult with any individual or organization on any topic, but will negotiate only with the Tucson Education Association."

TEA is the exclusive representative of all teachers in the District. This exclusive representation is further evidenced in the Consensus Agreement, Article 5, regarding grievances. Article 5-1(A) provides:

> "A. Grievance
>
> "A grievance means a complaint based upon an event or condition under which an employee works allegedly caused by misinterpretation or inequitable application of this Agreement, any policy, rule, practice, or regulation of the Board."

Nine grievances had been submitted. The grievances involved herein alleged WILLIAMS had been deprived of a number of work opportunities, including a number of coaching positions for which he is well qualified, that WILLIAMS was arbitrarily dismissed from an extra duty position as Cafeteria Supervisor by the principal after the principal admitted that the work done by WILLIAMS was satisfactory, that despite his 29 years of seniority in TUSD, WILLIAMS was notified that he had been transferred from his permanent position as a counselor to a permanent substitute teaching position, and that other violations existed including deprivation of compensatory time and disrespect by administrative staff. All of the grievances, except compensatory time, were denied at Level Two and at Level Three, by the Superintendent's designee.

WILLIAMS asked TUSD to proceed to Level 4 arbitration on the grievances. TUSD refused to proceed without a request from TEA

stating TEA had to sole right to request arbitration under Article 5-6 which provides:

> "Grievance: Level Four
>
> "Only grievances arising out of an alleged violation of a particular clause(s) of this Agreement may be submitted to level four (4). If the response of the third level of review does not result in resolution of the grievance, the Association on behalf of the grievant may invoke this level four (4) procedure within ten (10) working days of receipt of the level three (3) decision. The superintendent or designee and the Association shall agree on an arbitrator, and if they are unable to agree on an arbitrator, a request will be submitted by any or all of the parties to the American Arbitration Association for the selection of an arbitrator in accordance with AAA rules."

At the same time WILLIAMS requested TUSD to arbitrate his grievances, he wrote to Bob Gary, Executive Director of TEA, requesting TEA to take the grievances to Level 4, Arbitration. TEA requested an extension of time from TUSD to allow TEA Executive Board time to process the grievance since TEA was not aware the grievances had been filed. TEA

informed WILLIAMS, through his attorney, he could be present the Executive Board meeting, bring a representative, and provide information to the Board. WILLIAMS and his attorney were present at the TEA Executive Board meeting. Bob Gary covered each grievance explaining the pros and cons and made no recommendations to the Board at that time. WILLIAMS' grievances had not been submitted to the committee which usually monitors grievances and makes a recommendation, so no recommendation was presented to the TEA Executive Board, contrary to its usual procedure. WILLIAMS' attorney requested that the TEA Board allow all grievances to proceed to arbitration. All grievances were denied except the Cafeteria Supervisor grievance.

Several days after TEA Executive Board voted to allow the Cafeteria Supervisor job to go to arbitration, TEA reversed its decision due to mistaken votes at the original meeting, members absent from the original meeting and confusion at the original meeting. WILLIAMS was not informed of the

second TEA meeting nor given an opportunity to present information to the absent or confused Board at the second meeting. The Board previously had the opportunity to reconsider the grievances at the original TEA meeting where WILLIAMS, through his attorney, requested reconsideration of the grievances denied. The Board was aware at the original TEA meeting that the Cafeteria Supervisor grievance would proceed to arbitration.

WILLIAMS has acknowledged that several of the grievances were submitted the to Level One step in the grievance procedure beyond the time limits in the Consensus Agreement; however, most of these were continuing in nature and therefore timely.

WILLIAMS filed a complaint in the Superior Court of the State of Arizona alleging among other things, that the Consensus Agreement was void as being an illegal delegation of authority, and as violating his constitutional rights and that TEA as exclusive representative had a fiduciary duty in handling the grievances which it breached.

The Superior Court found that the Consensus Agreement violated no statutes or constitutions, that TEA owed no fiduciary duty to WILLIAMS and that TEA had not acted outrageously. It awarded summary judgment to TUSD and TEA.

The Court of Appeals found the grievances so trivial that it would not consider the merits of the issues raised. Although the Court of Appeals' decision says no constitutional and delegation issues were raised, due process issues and delegation of power issues were raised at all steps in the Arizona litigation. See, Federal Questions Raised, infra.

FEDERAL QUESTIONS RAISED

WILLIAMS, on January 3, 1983 in the Superior Court, in his Opposition to Defendant TEA'S Motion for Summary Judgment and Cross-Motion for Summary Judgment against TEA raised the federal questions. As to the fiduciary duty of the TEA, its breach and his

due process deprivation, WILLIAMS argued at pages 10-11:

> "Most of the case law on the duty of fair representation is in the context of the National Labor Relations Act or the Railway Labor Act. The duty of fair representation arose in Steele v. Louisville and NRR, 323 U.S. 192 (1944). The case makes various points about the duty that are helpful in determining this case.
>
> "The duty is a necessary ingredient in the power to exclusively bargain for all members of a bargaining unit. The state court decision being reviewed had held that the Railway Labor Act did not confer any statutory duty upon the exclusive bargaining representatives toward its members. The Supreme Court, reviewing this decision, stated:
>
> > 'If, as the State court has held, the act confers this power on the bargaining representative of a craft or class of employees without any commensurate statutory duty towards its members, constitutional questions arise, for the representative is clothed with power not unlike that of a legislature which is subject to constitutional limitations on its power to deny, restrict,

> destroy or discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty equally to protect those rights.'
>
> "This language is important as it implies that if the Consensus Agreement gave TEA the exclusive bargaining representative capacity and did not, along with that, give it a duty of fair representation then there would be constitutional problems. It is then fair to imply that TEA has a duty of fair representation to all teachers it represents."

WILLIAMS, on January 17, 1983, also raised the federal question of a protectable property right in Superior Court in Plaintiffs' Opposition to Tucson Unified School District No. of Pima County's Motion for Summary Judgement and Cross-Motion for Summary Judgment against Tucson Unified School District No. 1 of Pima County at pages ZZZ:

> "Mr. Williams' grievances involve the taking of various property interests as defined in Board of Regents v. Roth, 408 U.S. 564 (1971).

> 'To have a property interest in a benefit, a person clearly must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims....Property interests...are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law--rules of understanding that secure benefits that support claims of entitlement to those benefits.'

"In order to ensure that such a property interest is not taken away arbitrarily, the Constitution requires certain procedural safeguards when such a right is threatened. (See the Fourteenth Amendment) In Mathews v. Eldridge, 424 U.S. 319 (1976), the court stated that judicial type procedures should be imposed on administrative action when it would be necessary to assure fairness."

The issue of the illegal delegation of TUSD Board powers and deprivation of WILLIAMS' due process rights was raised in the Superior Court in Plaintiffs' Opposition to Tucson Unified School District No. 1 of Pima County's Motion for Summary Judgment and Cross-Motion of Summary Judgment Against Tucson Unified School District No. 1 of Pima County filed January 17, 1983, at pages 3-9 which stated:

> "As a political subdivision, it has only the rights and powers provided by statute. A.R.S. §15-441 provides:
>
> > 'The Board of Trustees shall prescribe and enforce rules for the government of the schools, not inconsistent with laws or rules prescribed by the State Board of Education.'
>
> "Further, A.R.S. §15-443 provides:
>
> > 'The Board of Trustees may, at any time, employ and fix the salaries of teachers...for the succeeding year.'
>
> "No Arizona statute exists which gives the School Board or District the right to enter into a collective bargaining

agreement with an exclusive representative that purports to bind all teachers or otherwise delegate its powers.

"The only case in Arizona dealing with the issues involved here is Board of Education v. Scottsdale Educational Association, 17 Ariz. App. 504 (1972) which was vacated on narrow procedural grounds in Board of Ed., H.S. Dist. No. 212 v. Scottsdale Ed. Ass'n, 109 Ariz. 342 (1973). The case however contains a comprehensive review of cases in other jurisdictions and provides guidance on the delegation issues.

"The court discussed the various meanings of 'collective bargaining.' (501) It stated that teachers had a constitutional right to organize themselves and appoint a representative to present their position on working conditions, salaries and other relevant matters to the Board in contract negotiations. (at 508) The representative and the Board also could legally enter into a discussion or consultation on such matters which the representative. The court argued this could be no different than 1200 teachers individually making known their desires to the Board' and thus was legal and did not result in an illegal delegation of the Board's powers. (at 508) The question before

the court was whether the Board could enter into a 'collective bargaining agreement' as used in private industry - ' the type of agreement...which...is not a contract of employment, but a trade agreement entered into between the employer and a representative of the employees dealing with wages, hours, working conditions and such other matters as may be mutually agreed upon including the exclusiveness of the bargaining representative.' (17 Ariz.App. at 510) The court found that such an agreement would clearly be illegal. Such an agreement, the court reasoned, would strip a political subdivision of its legislatively granted power to control employees and place such power in the hands of a private organization. (at 510)

"The court summarized the laws of other jurisdiction stating:

> 'All of the cases brought to our attention or located by this court, with on exception, hold that in the absence of legislative authority, a governmental body may not enter into such a binding collective bargaining agreement, as that term has been defined. A summary of that case law is:
>
> 'The reasoning of most of the reported

cases is that the employer-employee relationship in government is a legislative matter which may not be delegated. Such contracts if permitted to stand would result in taking away from from a municipality its legislative power to control its employees and vest such control in an unelected and uncontrolled private organization (a union).' Fellows v. La Tronica, supra, 377 P.2d at 550.

'Although executive and administrative officers may be vested with a certain amount of discreation and amy be authorized to act or make regulations in accordance with certain fix standards, nevertheless the matter of making such standards involves the exercise of legislative powers. Thus qualifications, tenure, compensation and working conditions of public officers and employees are wholly matters of lawmaking and cannot be the subject of bargaining or contract.' 206 S.W.2d at 545.

'For other cases holding that a governmental body cannot bind itself by a collective bargaining agreement, in absence of specific statutory

authority, see International U. of Op.Eng.Loc. 321 v. Water Works Board, 276 Ala. 462, 163 So.2d 619 (1964); N.J. Turnpike Auth. v. Amer. Fed. of State, etc., Emp. supra; Miami Water Works Local No. 654 v. City of Miami, 157 Fla. 445, 26 So.2d 194 (1946); Wichita Public School Emp. U., Local No. 513 v. Smith, 194 Kan. 2, 397 P.2d 357 (1964); Mugford v. Mayor and City Council, 185 Md. 266, 44 A.2d 745 (1945); City of Alcoa v. International Broth. of Elec. Wkrs., 203 Tenn 12, 308 S.W.2d 476 (1957).' Id.

"The Consensus Agreement makes the Tucson Education Association 'the exclusive representative of all teachers in the district.' (Article 4-1). The agreement is ratified by only 'the members of the Association.' (Article 4-2(c). The Consensus Agreement applies to 'any or all members of the Association's negotiations unit which consists of all full-time and part-time certificated personnel, including...counselors.' (Article 1-1). The Consensus is applied 'equitably to all teachers,' (Article 2-1(b) yet, the 'District reserves the right to consult with any individual or organization or any topic, but will negotiate only with the Tucson Education

Association.' (Emphasis added) (Article 3-8(b). Each of these provisions is directly contrary to the rationale in Board of Education v. Scottsdale Education Association, supra. That case limits the scope of any contract to only those persons who are members of the unit. The court stated:

> 'Nor should this opinion be construed as limiting the power of the Board to enter into one written contract with a representative of a teachers' organization binding all members of that organization provided that the terms of that contract are within the statutory authority of the Board and contains no terms of employment which could not be included in a standard contract for individual teachers. State Board of Regents v. United Packing House, supra.' Id. at 512.

"The language of the Scottsdale case as well as case law in many other states clearly make the whole Consensus Agreement, in that it purports to bind all teachers, illegal.

"We note that as of 1974, 40 states have passed some type of legislation controlling to what degree public employees may negotiate or bargain with

employers. (ref. here) Arizona has not passed any such legislation. Yet, the Consensus Agreement allows for the most liberal delegation of authority of the type allowed in only a few states by explicit legislative approval. If Arizona is to allow such delegation, legislative initiative is necessary. In its absence such delegation is illegal. See, Praeger Publ. 1935; Weitzman, John, The Scope of Bargaining in Public Employment, page 41.

"II. ALTERNATIVELY, THE GRIEVANCE PROCEDURE IS ILLEGAL

"Article 5-6, Grievance Level Four, provides:

> 'Only grievances arising out of an alleged violation of a particular clause(s) of this Agreement may be submitted to level four (4). If the response of the third level of review does no result in resolution of the grievance, the Association, on behalf of the grievant, any invoke this level four (4) procedure within ten (10) working days of receipt of the level 3 decision. The superintendent or designee and the Association shall agree on an arbitrator, and if they are unable to agree on an arbitrator, a request will be submitted by any

> or all of the parties to the American Arbitration Association for the selection of an arbitrator in accordance with AAA rules.'

"The provision seems clear that the Association will determine what grievances proceed to binding arbitration. The delegation of this duty by the Board to TEA is void. In Board of Education v. Scottsdale, supra at 511, the court recognized that contracts which prohibit the exercise of a statutory duty or which set a procedure to be followed before the Board may exercise a statutory power, in effect limiting the Board's discretion, are illegal. The court stated:

> 'The ultimate responsibility of controlling and managing the affairs of the school district rests with the board and the Board may not by contract delute the responsibility or surrender the Board's legal discretion in how that responsibility is to be exercised.' Id.

"The delegation to the Union of exclusive control of the grievance procedure deprives the Board of its decision making power.

WILLIAMS also raised the issues in the Court of Appeals. The issue of

protectable property right and due process with regard to the Consensus Agreement was raised in Appellants' Opening Brief at page 45-47, and specially at page 45:

> "C. All of the Acts of TUSD and TEA, Previously Discussed, in Establishing and Instituting the CONSENSUS AGREEMENT Deprived WILLIAMS of Due Process.
>
> "WILLIAMS' grievances involve the taking of various property interests as defined in Board of Regents v. Roth, 408 U.S. 564 (1971).
>
> > 'To have a property interest in a benefit, a person clearly must have more than a unilateral expection of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims....Property interests...are created and their dimensions are defined by existing rules or understanding that stem from an independent

> source such as state law--rules of understanding the secure benefits that support claims of entitlement to those benefits.'
>
> "In order to ensure that such property interest is not taken away arbitrarily, the Constitution requires certain procedural safeguards when such a right is threatened. United States Constitution, Fourteenth Amendment. In Mathews v. Eldridge, 424 U.S. 319 (1976), the court stated the judicial type procedures should be imposed on administrative action when it would be necessary to assure fairness."

The issue of the illegal delegation was raised at length in Appellants' Opening Brief at pages 18-27:

> "II. THE CONSENSUS AGREEMENT ENTERED INTO BY TUSD AND TEA IS ILLEGAL
>
> "A. The Consensus Agreement is an Illegal Delegation of the School Board's Powers.
>
> "The grant to an association of the status of exclusive bargaining representative is within the power of a School Board only if specifically authorized by statute. In the absence of legislative authority, as here, such a delegation is illegal and the Consensus Agreement void.

"TUSD is a political subdivision organized and existing under the laws of the State of Arizona. [Answer of TUSD]. As a political subdivision, it has only the rights and powers provided by statute. The legislature could authorize school boards to enter into collective bargaining or trade agreements, such as the CONSENSUS AGREEMENT. The Arizona legislature has never authorized such agreements. The only possible basis for the act is through the claimed inherent powers of the school board. A.R.S. §15-441 provides:

> 'The Board of Trustees shall prescribe and enforce rules for the government of the schools, not inconsistent with laws or rules prescribed by the State Board of Education.'

"Further, A.R.S. §15-443 provides:

> 'The Board of Trustees may, at any time, employ and fix the salaries of teachers...for the succeeding year."

"No Arizona statute or express authority exists which gives the School Board or District the right to enter or negotiate into a collective bargaining agreement with an exclusive representative that purports to bind all teachers or otherwise delegate its

powers. It is clear that the School Board has only the authority granted by statute which must be exercised in the mode and within the limits permitted by statute. School District No. 69 v. Altheke, 10 Ariz. App. 333, 338, 458 P.2d 537 (1969). In District No. 69, Id., the court stated:

> 'a public officer may not agree to restrict his freedom of action in the exercise of his powers, [citation] and an agreement which interferes with his unbiased discharge of his duty to the public, in the exercise of his office, is against public policy and unenforceable.' As was held in Devol v. Board of Regents, 6 Ariz. 259, 56 P. 737 (1899), the Board [in that case of Regents] did not have the authority to engage employees 'by a contract different from that which was prescribed by the statute.'

"The only Arizona case dealing directly with the powers of the School Board to enter into such an agreement was Board of Education v. Scottsdale Education Association, 17 Ariz. App. 504 (1972) which although vacated by the Arizona Supreme court on narrow procedural grounds, Board of Education, H.S. Dist. #212 v. Scottsdale Education Association, 109 Ariz. 342,

(1973), found an agreement of this type to be clearly illegal.[1] Extensive case decision in many jurisdictions has either precluded such agreements in the absence of statutory authority or severly restricted the agreements to the situation in which the organization bargained only for its own members. See, e.g.

"State Board of Regents v. United Packing House, 175 N.W.2d 110 (Iowa 1970); International Brotherhood of Electrical Workers v. City of Hastings, 179 Neb. 455, 138 N.W.2d 822 (1965); Norwalk Teachers Ass'n v. Board of Education, 138 Conn. 269, 83 A.2d 182 (1951); Board of Education v. Sand, 277 Minn. 202, 34 N.W.2d 689 (1948); N.J. Turnpike Authority v. American Federation of State Employees, 83 N.J. Super. 389, 200 A.2d 134 (1964); City of Springfield v. Clouse, 356 Mo. 1239, 206 S.W.2d 539 (1947). See also, 31 A.L.R.2d 1142 (1953).

"The rationale for the decisions is that the employer--employee relationship in government is a legislative matter which cannot be delegated. If such contracts were permitted, the result would be to take away from a political subdivision its legislative power to control its employees and vest control in an unelected and uncontrolled private organization. In

State Board of Regents v. United Packing House, supra, the court stated:

> '...if the legislature desires to give public employees the advantages of collective bargaining in the full sense as it is used in private industry, it should do so by specific legislation to that effect. We cannot imply authority under these general powers to agree to exclusive representation, represented by a group of their choosing or an individual the right to represent himself.' 175 N.W.2d at 113.

"The Court in Board of Education v. Scottsdale Education Association had properly declined to follow what they termed the "one exception" to this line of cases, the decision in Chicago Div. of Ill. Ed. Ass'n v. Board of Education, 76 Ill. App. 2d 456, 222 N.E.2d 243 (1966). The Court concluded that:

> '...where, as in Arizona the power to manage and control the affairs of the school district lies exclusively with the board of trustees, except where that power has been by specific legislation granted to someone else, the Board may not delegate that authority without specific

legislative authorization. There is no question that Arizona has no such legislation in the context of public employee collective bargaining agreements." Board of Education v. Scottsdale Education Association, supra at 511.

"The Court in Board of Education v. Scottsdale Education Association, with a thorough review of the law, summarized the laws of other jurisdictions stating:

> 'All of the cases brought to our attention or located by this court, with one exception, hold that in the absence of legislative authority, a governmental body may not enter into such a binding collective bargaining agreement, as that term has been defined. A summary of that case law is:
>
> > 'The reasoning of most of the reported cases is that the employer-employee relationship in government is a legislative matter which may not be delegated. Such contracts if permitted to stand would result in taking away from a municipality its

> legislative power to control its employees and vest such control in an unelected and uncontrolled private organization (a union).' Fellows v. La Tronica, 151 Colo. 300, 377 P.2d 547 (1962).

'Although executive and administrative officers may be vested with a certain amount of discretion and may be authorized to act or make regulations in accordance with certain fixed standards, nevertheless the matter of making such standards involves the exercise of legislative powers. Thus qualifications, tenure, compensation and working conditions of public officers and employees are wholly matters of law making and cannot be the subject of bargaining or contract.' City of Springfield v. Clouse, 356 Mo. 1239, 206 S.W.2d 539 (1947).'

'For other cases holding that a governmental body cannot bind itself by a collective bargaining agreement, in absence of specific statutory authority, see International U. of Op. Eng. Loc. 321 v. Water Works Board, 276 Ala.

462, 163 So.2d 619 (1964); N.J. Turnpike Auth. v. Amer. Fed. of State, etc., Emp., supra; Miami Water Works Local No. 654 v. City of Miami, 157 Fla. 445, 26 So.2d 194 (1946); Wichita Public School Emp. U., Local No. 513 v. Smith, 194 Kan. 2, 397 P.2d 357 (1964); Mugford v. Mayor and City Council, 185 Md. 266, 44 A.2d 745 (1945); City of Alcoa v. International Broth. of Elec. Wkrs., 203 Tenn. 12, 308 S.W.2d 476 (1957)." Id. at 511.

"The Nebraska Supreme Court in summing up the law on the subject stated:

> 'The generally accepted rule established in other jurisdictions on the issue, which we adopt, is that a public agency or governmental employer has no legal authority to bargain with a labor union in the absence of express statutory authority.' International Brotherhood of Electrical Workers v. City of Hastings, 179 Neb. 455, 138 N.W.2d 822 (1965).

"As recently as Perry Education Association v. Perry Local Educators Association, et al., 51 USLW 4165 (U.S. February 23, 1983) (No. 81-896), the legislative authorization for delegation

was recognized. Although the statutory authorization was not a consideration in the case, its importance cannot be minimized. In 1978, the Perry Township Board of Education, went from a system wherein no union was granted the status as exclusive bargaining representative to a system wherein the Perry Educators' Association (PEA) was granted the status as exclusive bargaining representative. Id. at 4166.

"The delegation of power by the Perry Township Board of Education is specifically authorized by the Indiana State Legislature as noted by the Supreme Court, Supra at page two of the opinion. The enabling legislation is lengthy and detailed and thus it could not be argued that the Perry Board illegally delegated its power when such delegation is specifically authorized and controlled by statute.

"Indiana Statute 20-7.5-1-1 states:

> '20-7.5-1-1 [28-4551]. Legislative intent.--The Indiana general assembly hereby declares that:
>
> (a) The citizens of Indiana have a fundamental interest in the development of harmonious and cooperative relationships between school corporations and their certificated employees;

(b) Recognition by school employers of the right of school employees to organize, and acceptance of the principle and procedure of collective bargaining between school employers and school employee organizations, can alleviate various forms of strife and unrest;

(c) The state has a basic obligation to protect the public by attempting to prevent any material interference with the normal public school educational process;

(d) The relationship between school corporation employers and certificated school employees is not comparable to the relationship between private employers and employees among others for the following reasons: (i) a public school corporation is not operated for profit but to insure the citizens of the state rights guaranteed them by the Indiana state constitution; (ii) the obligation to educate children and the methods by which such education is effected will change rapidly with increasing technology, the needs of an advancing civilization and requirements for substantial educational innovation; (iii) the Indiana general assembly

has delegated the discretion to carry out this changing and innovative educational function to the local governing bodies of school corporations, composed of citizens elected or appointed under applicable law, a delegation which these bodies may not and should not bargain away; and (iv) public school corporations have different obligations with respect to certificated school employees under constitutional and statutory requirements than private employers have to their employees. [IC 1971, 20-7.5-1-1, as added by Acts 1973, P.L. 217, §1, p. 1080]

"The Indiana statutes, both authorize the duty and scope of collective bargaining. Indiana statute 20.7.5-1-4 states:

'Subjects of bargaining.--A school employer shall bargain collectively with the exclusive representative on the following: salary, wages, hours, and salary and wage related fringe benefits. A contract may also contain a grievance procedure culminating in final and binding arbitration of unresolved grievances, but such binding

arbitration shall have no power to amend, add to, subtract from or supplement provisions of the contract. [IC 1971, 20-7.5-1-4, as added by Acts 1973, P.L. 217 §1, p. 1080.]

"Further Indiana Statute 20-7.5-1-5 states:

'Subjects of discussion.--(a) A school employer shall discuss with the exclusive representative of certificated employees, and may, but shall not be required to, bargain collectively, negotiate or enter into a written contract concerning or be subject to or enter into, impasse procedures on the following matters: working conditions, other than those provided in section 4 [200-7.5-1-4]; curriculum development and revision; textbook selection; teaching methods; selection, assignment or promotion of personnel; student discipline; expulsion or supervision of students; pupil-teacher ratio; class size or budget appropriations: Provided, however, That any items included in the 1972-1973 agreements between any employer school corporation and the employee organization

shall continue to be bargainable.
(b) Nothing shall prevent a superintendent or his designee from making recommendations to the school employer. [IC 1971, 20-7.5-1-5, as added by Acts 1973, P.L. 217 §1, p. 1080.]

"Indiana and the vast majority of states have enacted legislation governing the rights and limits of a school board's power to delegate. Such statutes were not mere symbolic gestures allowing the boards to do what they could have done anyway. Rather, the delegation laws were passed in order to make legal what otherwise would be illegal. Tucson Unified School District, in arguing that a school board may grant a union the status of exclusive bargaining agent without explicit legislative authority, must presume that the Indiana statute and those similar statutes in other states were all totally unnecessary.

"WILLIAMS argues that the School Board can meet with representative of the teachers. All employees have the right to peaceably assemble and organize. City of Springfield v. Clouse, 356 Mo, 239, 206 S.W.2d 539 (1947). The School Board cannot enter into or bind itself to a Consensus Agreement dealing with wage, hours, working

conditions, and such other matters as may be mutually agreed upon including the exclusiveness of representation because such an agreement is an illegal delegation of authority. The CONSENSUS AGREEMENT itself recognized the non-delegability of certain Board powers. Article 2-3 states:

> 'The Board and the Association recognize that the Board has certain powers, discretions and duties that, under the Constitution and Laws of the State of Arizona, may not be delegated, limited or abrogated by agreement with any party. Accordingly, if any provision of this agreement or any application to any teacher covered hereby, shall be found contrary to law, such provision or application shall have effect in the law only to the extent permitted by law, but all other provisions or applications of this Agreement shall nevertheless continue in full force and effect.'

"The language of the vacated Board of Education v. Scottsdale Education Association, case, as well as case law in many other jurisdictions, clearly indicate the entire CONSENSUS AGREEMENT is illegal. The CONSENSUS

AGREEMENT between TUSD and TEA has permitted the most liberal delegation of authority, the type of which is allowed in only a few states and only by explicit legislative approval. Nothing in the Arizona laws even remotely authorizes binding trade or collective bargaining agreements with school districts. The court wrongfully concluded the CONSENSUS AGREEMENT was a legal delegation of power under the statutes. The Court can interpret but not legislate. State v. Anway, 87 Ariz. 206, 209, 349 P.2d 774 (1960); Mayberry v. Duncan, 68 Ariz. 281, 205 P.2d 364 (1949)."

" [1] One other case takes of powers of a political subdivision. That case is inappropriate to the case at bar. In Local 266, etc. v. Salt River Project Agricultural Improvement & Power District, 78 Ariz. 30, 275 P.2d 393 (1955) it was held that an agricultural improvement and power district, owned by private landholders, was empowered to enter into a collective bargaining agreement with a union. In that case, the court stressed that the employees involved were performing proprietary functions, and that the legislature intended the agricultural improvement and power district to function as a business and economic organization, not as a true

> governmental agency. The court's opinion in fact, in upholding the right of the proprietary employees to strike, stressed at pp. 41 and 42 that their proprietary functions were totally different from those of teachers. Moreover, the Salt River Project case did not even involve key question raised here whether, assuming that this government body can enter into an agreement with an employee association, that agreement can prevent the governmental agency from dealing directly with employees who are not members of that association.

The issue of the fiduciary duty of the TEA and the due process problems arising as a result of its absence was presented to the Court of Appeals in Appellants Opening Brief at pages 38-39:

> "To hold that TEA had no such duty would mean that they could deny arbitration completely arbitrarily, in a blatantly discriminatory manner or in total bad faith.
>
> "The existence of a fiduciary duty owed by a union, upon receiving the status of exclusive representative, was recently affirmed by the Supreme Court:
>
> > 'By seeking and acquiring the exclusive right to

> power to speak for a group of employees, the union assumes a corresponding duty to discharge that responsibility faithfully--a duty which it owes to the employees whom it represents and on which the employer with whom it bargains may rely.' Bowen v. U.S. Postal Service, 103 S.Ct. 588 (1983).

"The fiduciary duty is a necessary ingredient in the power to exclusively bargain for all members of a bargaining unit. The Supreme Court, in discussion the reasons necessitating a fiduciary duty, stated:

> 'If, as the State Court has held, the act confers this power on the bargaining representative of a craft or class of employees without any commensurate statutory duty towards its members, constitutional questions arise, for the representative is clothed with power not unlike that of a legislature which is subject to constitutional limitations on its power to deny, restrict, destroy or discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty equally to protect those

rights.' Steele v. Louisville & Nashville Railroad Co., et al, 323 U.S. 192, 193 (1944).

"This language of that case states that if the CONSENSUS AGREEMENT gave TEA the exclusive bargaining representative capacity and did not, along with that, give it a duty of fair representation then there would be constitutional problems. To avoid constitutional problems, the court must determine that TEA has a duty of fair representation to all the teachers it represents, including WILLIAMS.

"There is a convincing analogy between the Supreme Court's interpretation of the Railway Labor Act and our interpretation of the CONSENSUS AGREEMENT. The Supreme Court, in finding an implied, and necessary, duty of fair representation in bargaining unto subject to the Railway Labor Act, 45 U.S.C.A. §151 et seq., reviewed the purpose of the act declared in Section 2."

The Court of Appeals did not address the issues, finding instead that the maxim of "de minimis no curat lex" should apply due to the absence of a legally enforceable right or that the damage sustained was de minimis. Petitioners herein briefed

the fact the maxim did not apply to constitutional questions in its Motion for Rehearing which was dismissed.

The federal questions were presented to the Arizona Supreme Court in the Petition for Review filed May 17, 1984. The issue of due process and the fiduciary duty of an exclusive bargaining representative were presented at 18-20:

> "The AGREEMENT is infirm under Constitutional law for its lack of establishing a fiduciary duty upon TEA. The main corpus of labor law is controlled by the National Labor Relations Act (NLRA), 29 U.S.C.A. §150 et seq., and primary jurisdiction for alleged violations of that act is with the National Labor Relations Board (NLRB). However, the AGREEMENT involved in this dispute is explicitly exempt from the federal laws because it involves a political subdivision of the State (29 U.S.C.A. §152[2-3]). The public policy behind the political subdivision exemption from the NLRA is that such employer-employee relationships are governed by the state legislature. Arizona has not taken any legislative steps to govern such relationships. If the Court finds the AGREEMENT legal, a serious problem is

then raised as to what obligations TEA has toward APPELLANT and what aspects of the NLRA general case law applies....- The Supreme Court, in discussion the reasons necessitating a fiduciary duty, stated:

> 'If, as the State Court has held, the act confers this power on the bargaining representative of a craft or class of employees without any commensurate statutory duty towards its members, constitutional questions arise, for the representative is clothed with power not unlike that of a legislature which is subject to constitutional limitations on its power to deny, restrict, destroy or discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty equally to protect those rights.' Steele v. Louisville & Nashville Railroad Co., et al., 323 U.S. 192, 193 (1944).

"The legal issues presented are important issues. In United Steelworkers of America v. Enterprise Wheel & Car Corp., 80 S.Ct. 1358 (1960), the Supreme Court recognized that rights created by a collective bargaining contract continue to be enforceable after the expiration of the

contract. See also, General Tire & Rubber Co. v. Rubber Workers, 191 F.Supp. 911 (D.C. 1961) aff'd 294 F.2d 957 (CA 1, 1961).

"The AGREEMENT constitutes a collective bargaining agreement with enforceable rights. In United Steelworkers of America v. Warrior & Gulf Navigation Company, 80 S.Ct. 1347, 1351 (1960), the Court stated:

> 'The collective bargaining agreement states the rights and duties of the parties. It is more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate. See Shulman, Reason, Contract, and Law in Labor Relations, 68 Harv.L.Rev. 999, 1004-1005. The collective agreement covers the whole employment relationship. It calls into being a new common law--the common law of a particular industry or of a particular plant.'

The issues of the TUSD Board illegal delegation and due process were also addressed in the Petition for Review, pages 13-17:

"The important legal question of validity of the entire AGREEMENT or of portions of the AGREEMENT, as negotiated and contract between TUSD, a political subdividion of the State statutorily created and with limited powers and ability to delegate those powers and the TEA, an association of which not all tenured employees are members but which is granted exclusive representation and negotiation rights - has not been resolved in Arizona. In Board of Education v. Scottsdale Education Association, 17 Ariz. App. 504, 498 P.2d 578 (1972), the Court of Appeals found such an agreement as applied to nonmembers illegal. The decision was vacated on narrow procedural grounds Board of Education, H.S. Dist. 212 v. Scottsdale Education Association, 109 Ariz. 342, 509 P.2d 612 (1973). Nothing in the Arizona Supreme Court's decision weakened the reasoning of the Court of Appeals' decisions.

"The Court of Appeals concluded that:

> '...where, as in Arizona the power to manage and control the affairs of the school district lies exclusively with the board of trustees, except where that power has been by specific legislation granted to someone else, the Board may not delegate that authority

without specific legislative authorization. There is no question that Arizona has no such legislation in the context of public employee collective bargaining agreements.' Board of Education v. Scottsdale Education Association, supra at 511.

"The Court in Board of Education v. Scottsdale Education Association, with a thorough review of the law, summarized the laws of other jurisdictions stating:

> 'All of the cases brought to our attention or located by this court, with one exception, hold that in the absence of legislative authority, a governmental body may not enter into such a binding collective bargaining agreement, as that term has been defined. A summary of that case law is:
>
> 'The reasoning of most of the reported cases is that the employer-employee relationship in government is a legislative matter which may not be delegated. Such contracts if permitted to stand would result in taking away from a municipality its legislative power to control its employees and vest such

control in an unelected and uncontrolled private organization (a union).' Fellows v. La Tronica, 151 Colo. 300, 377 P.2d 547 (1962).

'Although executive and administrative officers may be vested with a certain amount of discretion andy may be authorized to act or make regulations in accordance with certain fixed standards, nevertheless the matter of making such standards involves the exercise of legislative powers. Thus qualifications, tenure, compensation and working conditions of public officers and employees are wholly matters of law making and cannot be the subject of bargaining or contract.' City of Springfield v. Clouse, 356 Mo. 1239, 206 S.W.2d 539 (1947).'

"For other cases holding that a governmental body cannot bind itself by a collective bargaining agreement, in absence of specific statutory authority, see International U. of Op. Eng. Loc. 321 v. Water Works Board, 276 Ala. 462, 163 So.2d 619 (1964); N.J. Turnpike Auth. v. Amer. Fed. of State, etc., Emp., supra; Miami Water Works Local

No. 654 v. City of Miami, 157 Fla. 445, 26 So.2d 194 (1946); Wichita Public School Emp. U., Local No. 513 v. Smith, 194 Kan. 2, 397 P.2d 357 (1964); Mugford v. Mayor and City Council, 185 Md. 266, 44 A.2d 745 (1945); City of Alcoa v. International Broth. of Elec. Wkrs., 203 Tenn. 12, 308 S.W.2d 476 (1957).' Id. at 511.

"The Nebraska Supreme Court in summing up the law on the subject stated:

> 'The generally accepted rule established in other jurisdictions on the issue, which we adopt, is that a public agency or governmental employer has no legal authority to bargain with a labor union in the absence of express statutory authority.'
> International Brotherhood of Electrical Workers v. City of Hastings, 179 Nb. 455, 138 N.W.2d 822 (1965).

"As recently as Perry Education Association v. Perry Local Educators Association, et al., 51 USLW 4165 (U.S. February 23, 1983) (No. 81-896), the legislative authorization for required delegation and entering into collective bargaining was recognized. The issue is ripe for decision by the Arizona

supreme Court as TUSD and TEA continue to enter AGREEMENTS and many tenured personnel continue to not be members of the TEA.

"The language of the vacated Board of Education v. Scottsdale Education Association, case, as well as case law in many other jurisdictions, clearly indicate the entire AGREEMENT is illegal. The AGREEMENT between TUSD and TEA has permitted the most liberal delegation of authority, the type of which is allowed in only a few states and only by explicit legislative approval. Nothing in the Arizona laws even remotely authorizes binding trade or collective bargaining agreements with school districts. The Superior Court wrongfully concluded the AGREEMENT was a legal delegation of power under the statutes. The Court can interpret but not legislate. State v.Anway, 87 Ariz. 206, 209, 349 P.2d 774 (1960); Mayberry v. Duncan, 68 Ariz. 281, 205 P.2d 364 (1949).

"The AGREEMENT forces APPELLANT to accept TEA as his representative, and even then, TEA can refuse to proceed to arbitration."

The Arizona Supreme Court denied review and thereby affirming the Superior Court decision of no violation of the Constitution in the creation and operation of the Consensus

Agreement and the decision that the TEA, as exclusive representative, owed no fiduciary duty to WILLIAMS and there was no due process violation in the absence of the fiduciary duty.

ARGUMENT

The Arizona courts have decided the federal questions of fiduciary duty and lack of due process in its absence in a way which conflicts with applicable U.S. Supreme Court decisions. The Arizona courts have decided the federal questions of illegal delegation of authority and due process violations therefrom in a way which, although the United States Supreme Court has not specifically ruled, conflicts with the United States Supreme Court decisions. The case is one of importance to all teachers and other governmental employees in Arizona and in all states where there is no statutory scheme for union representation of local government employees. The United States Supreme Court ought to review the case and decide that the Arizona

Courts have erred. Respondents have briefed the issues at length, to the Arizona Courts, supra, Federal Questions Raised.

With regard to the delegation and due process issues, this Court has decided some cases which require a determination of constitutional violations. In Abood v. Detroit Board of Education, 431 U.S. 209 (1977), this Court upheld an agency shop provision of a collective bargaining agreement between the board of education and a union. The Michigan statute authorized union representation of local governmental employees and permitted an agency shop. In Arizona, there is no such statutory authority for a collective bargaining agreement or Consensus Agreement between the TEA and TUSD. The question of delegation of authority was briefly addressed in Abood, supra, at 1808 by Justice Powell's concurrence in which Chief Justice Burger and Justice Blackmun joined:

> "The collective bargain agreement to which a public agency is a party is not merely analogous to legislation, it has all the

attributes of legislation for the subjects with which it deals."

Further in Footnote 8, Id. at 1809, Justice Powell's concurrence notes:

"8. Cf. Summers, Public Sector Bargaining: —Problems of Governmental Decision-making, 44 U.Cin.L.Rev. 669, 670 (1975):

'The uniqueness of public employment is not in the employees nor in the work performed; the uniqueness is in the special character of the employer. The employer is government; the ones who act on behalf of the employer are public officials; and the ones to whom those officials are answerable are citizens and voters. We have developed a whole structure of constitutional and statutory principles, and a whole culture of political practices and attitudes as to how government is to be conducted, what powers public officials are to exercise, and how they are to be made answerable for their actions. Collective bargaining by public employers must fit within the governmental structure and must function consistently with our governmental processes; the problems

> of the public employer accommodating is collective bargaining function to government structures and process is what makes public sector bargaining unique.'

As to the delegation issue, Justice Powell further, Id. at 1813, stated in footnote 15:

> "15. By stressing the Union's duty of fair representation, ante, at 1793, the Court may be suggesting that the State has provided an adequate means for minority viewpoints to be heard within the Union. But even if Michigan law could read to impose a broad obligation on the union to listen to and represent the viewpoints of all employees on such issues as curriculum reform, imposition of such an obligation on the Union could not relieve the school board of its responsibilities--at least, it could not do so unless the Union were declared to be a public agency to which the State had delegated some part of the school board's power. Yet such a delegation of state power, covering an unlimited range of the school board's responsibility to set school policy, see nn. 10 and 11, supra would itself raise grave constitutional issues. If power to determine school policy were shifted in part from officials elected by the population of the school district to officials elected by the school board's

> employees, the voters of the district could complaint with force and reason that their voting power and influence on the decisionmaking process had been unconstitutionally diluted. See Kramer v. Union School Dist., 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969); Hadley v. Junior College Dist., 397 U.S. 50, 90 S.Ct. 791, 25 L.Ed.2d 45 (1970)"

The case sub judice has all the constitutional problems raised by Justice Powell's concurrence. See also, Perry Education Association v. Perry Local Educators, supra.

As to the federal due process questions presented to the Arizona Superior Court, the Arizona Court of Appeals, and the Arizona Supreme Court are substantial. The Superior Court specifically found that the TEA had no fiduciary duty. The Court of Appeals wrongfully looked to the contents of the grievances to determine a trivial problem, with no protectable rights and to avoid the constitutional issues that were raised. The United States Supreme Court has addressed issues such as this before and

recognized rights of employment, the fiduciary duty of an exclusive bargaining representative, and the due process implications. In Elgin J. & E. Railway Co. v. Burley, 65 S.Ct. 1282, 1290-91 (1945), the Court stated:

> "The dispute relates either to he meaning or proper application of a particular provision with reference to a specific situation or to an omitted case. In the latter event the claim is founded upon some incident of the employment relations, or asserted one,...In either case the claim is to rights accrued, not merely to have new ones created for the future.
>
> "...The so-called minor disputes, on the other hand, involving grievances, affect the smaller differences which inevitably appear in the carrying out of major agreements and policies or arise incidentally in the course of an employment. They represent specific maladjustments of a detailed or individual quality...." (Emphasis added.)

A person's employment or occupation is a property right entitled to protection.

> "The right to work for a living in the common occupation of the community is of the very essence of the

> personal freedom and opportunity that it was the purpose of the Fourteenth Amendment to secure." Truax v. Raich, 239 U.S. 33, 36 S.Ct. 7, (1915).

The Court has long held that vested rights cannot be divested without due process of law including notice and an opportunity to be heard. Joint Anti-Fascist Committee v. McGrath, 341 U.S. 123 (1951); Perry v. Sinderman, 408 U.S. 564 (1972).

Respondent was legitimately entitled to a teaching position and all rights arising therefrom including dealing with TUSD and not TEA with regard to employment problems. Due process requires that a person be given notice and a hearing before such entitlements are revoked or modified. Peacock v. Board of Regents of the Universities and State Colleges of Arizona, 510 F.2d 1324 (9th Cir. 1975). In Arnett v. Kennedy, 416 U.S. 134 (1974) this Court recognized the necessity of due process when legitimate entitlement is involved:

> "[W]here there is a legitimate entitlement to a job, as when a person is given employment

> subject to his meeting certain specific conditions, due process requires, in order to insure against arbitrariness by the State and the administration of its law, hat a person be given notice and a hearing before he is finally discharged."

Through the delegation of authority, WILLIAMS was deprived of his due process rights.

As to the decision that TEA as exclusive bargaining representative had no fiduciary duty to WILLIAMS, and there was no due process violation as a result of the absence of a fiduciary duty, there is substantial U.S. Supreme Court case law to the contrary. In Bowen v. U.S. Postal Service, 103 S.Ct. 588 (1983) the Court stated:

> "By seeking and acquiring the exclusive right to power to speak for a group of employees, the union assumes a corresponding duty to discharge that responsibility faithfully--a duty which it owes to the employees whom it represents and on which the employer with whom it bargains may rely."

The fiduciary duty is a constitutionally mandated requirement for an exclusive

representative. In Steele v. Louisville & Nashville Railroad Co., 323 U.S. 192, 193 (1944), the Court stated:

> "If, as the State court has held, the act confers this power on the bargaining representative, without any commensurate statutory duty toward its members, constitutional questions arise, for the representative is clothed with power not unlike that of a legislature which is subject to clothed with power not unlike that of a legislature which is subject to constitutional limitations on its power to deny, retract, destroy or discriminate against the rights of those for whom it legislates."

The Court of Appeals wrongfully failed to address the Constitutional issues because of the "trivial" nature of the complaints. The U.S. Supreme Court has recognized the importance of work place issues. In United Steel Workers of America v. American Manufacturing Co., 80 S.Ct. 1343, 1345-46 (1960), dealing with seniority provisions stated:

> "After reviewing the evidence [the Court of Appeals] held that the grievance is 'a frivolous, patently baseless

one, not subject to arbitration under the collective bargaining agreement.' Id., at page 628. The case is here on a writ of certiorari, 361 U.S. 881, 180 S.Ct. 152, 4 L.Ed.2d 118.

"...The lower courts in the instant case had a like preoccupation with ordinary contract law. The collective agreement requires arbitration of claims that courts might be unwilling to entertain. In the context of the plant or industry the grievance may assume proportions of which judges are ignorant. Yet, the agreement is to submit all grievances to arbitration, not merely those that a court may deem to be meritorious....The question is not whether in the mind of the court there is equity in the claim. Arbitration is stabilizing influence only as it serves as a vehicle for handling any and all disputes that arise under the agreement.

"[5-6] The collective agreement calls for the submission of grievances in the categories which it describes, irrespective of whether a court may deem them to be meritorious....Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment, when it was his judgment and all that

it connotes that was bargained for.

> "[7] The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious. The processing of even frivolous claims may have therapeutic values of which those who are not a part of the plant environment may be quite unaware." (Emphasis added.)

The Consensus Agreement constitutes a collective bargaining agreement with enforceable rights. In United Steelworkers of America v. Warrior & Gulf Navigation Company, 80 S.Ct. 1347, 1351 (1960), the Court stated:

> "The collective bargaining agreement states the rights and duties of the parties. It is more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate. See Shulman, Reason, Contract, and Law in Labor Relations, 68 Harv.L.Rev. 999, 1004-1005. The collective agreement

> covers the whole employment relationship. It calls into being a new common law--the common law of a particular industry or of a particular plant.

The issues of due process raised are vital to all teachers or other government employees who are not members of the recognized exclusive bargaining agent in a School District which has no statutory authority to enter into a collective bargaining contract with a representative which has no contractually or statutorily established fiduciary duty to represent members as well as nonmembers in negotiations and grievances arising from the work environment of tenured personnel.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for Writ of Certiorari should be granted.

BUSBY & McCRACKEN, P.C.

CATHERINE M. McCRACKEN
1241 East Prince Road
Tucson, Arizona 85719
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, CATHERINE M. McCRACKEN, attorney for Petitioners herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 21 day of December, 1984, as per the direction of the Clerk of the Supreme Court, served copies of the foregoing Petition for Writ of Certiorari with the new Appendix F, on the parties hereto as follows:

On the Respondent TUCSON UNIFIED SCHOOL DISTRICT by hand delivering three (3) copies of it to its attorney of record:

WILLIAM B. HANSON, ESQ.
240 North Stone Ave.
Tucson, Arizona 85701
(602) 623-3411

On the respondent TUCSON EDUCATION ASSOCIATION by hand delivering three (3) copies of if to its attorney of record:

ALEX A. GAYNES, ESQ.
2438 East Broadway Blvd.
Tucson, Arizona 85719
(602) 792-4983

Catherine M. McCracken

CATHERINE M. McCRACKEN
1241 East Prince Road
Tucson, Arizona 85719
(602) 293-0344

APPENDIX "A"

Opinion to be Reviewed

Arizona Court of Appeal
Memorandum Decision

A P P E N D I X

APPENDIX "A"

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

No. 2 CA-CIV 4927

JOHN W. WILLIAMS and WINIFRED WILLIAMS, husband and wife,

Plaintiffs/Appellants,

v.

TUCSON UNIFIED SCHOOL DISTRICT NO. 1 OF PIMA COUNTY, a political subdivision of the State of ARizona; and TUCSON EDUCATION ASSOCIATION, an Arizona corporation,

Defendants/Appellees.

.....

HAYES, BUSBY & McCRACKEN;
by Ms. Catherine M. McCracken,

Attorneys for Plaintiffs/Appellants

DeCONCINI, McDONALD, BRAMMER, YETWIN & LACY, P.C.;
by William B. Hanson, Esq.,

Attorneys for Defendant/Appellee
Tucson Unified School District No. 1

Alex A. Gaynes, Esq.

Attorney for Defendant/Appellee
Tucson Education Association

The above-entitled matter was duly submitted to the Court. The Court has this day rendered its Memorandum Decision.

IT IS ORDERED that the Memorandum Decision be filed by the Clerk, and under the Arizona Rules of Civil Appellate Procedure, Rule 22(b), fifteen (15) days are allowed from this date to file a Motion for Reconsideration; or under Arizona Rules of Civil Appellate Procedure, Rule 23(a), fifteen (15) days are allowed from this date to file a Petition for Review.

IT IS FURTHER ORDERED that a copy of this Order, together with a copy of the Memorandum Decision, be sent to each party appearing or the attorney for such party and to The Honorable Lillian S. Fisher, Judge, Pima County Superior Court.

DATED: March 22, 1984.

BEN C. BIRDSALL
Chief Judge

Copies mailed as directed this 22
day of March, 198__.

ELIZABETH URWIN FRITZ, Clerk.

NOTE: Amendments to Arizona Rules of Civil Appellate Procedure effective Sep. 1, 198__.

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

No. 2 CA-CIV 4927

JOHN W. WILLIAMS and WINIFRED WILLIAMS, husband and wife,

Plaintiffs/Appellants,

v.

TUCSON UNIFIED SCHOOL DISTRICT NO. 1 OF PIMA COUNTY, a political subdivision of the State of ARizona; and TUCSON EDUCATION ASSOCIATION, an Arizona corporation,

Defendants/Appellees.

Appeal from the Superior Court of Pima County
Cause No. 196770
Honorable Lillian S. Fisher, Judge.
AFFIRMED

HAYES, BUSBY & McCRACKEN;
by Ms. Catherine M. McCracken,

Attorneys for Plaintiffs/Appellants

DeCONCINI, McDONALD, BRAMMER, YETWIN & LACY, P.C.;
by William B. Hanson, Esq.,

Attorneys for Defendant/Appellee
Tucson Unified School District No. 1

Alex A. Gaynes, Esq.

Attorney for Defendant/Appellee
Tucson Education Association

B I R D S A L L, Chief Judge.

This appeal is from a summary judgment in favor of the appellees Tucson Unified School District No. 1 (TUSD) and Tucson Education Association (TEA). The complaint filed by the appellants, John W. Williams and spouse, alleged in separate counts that the appellees had wrongfully processed certain grievances which he had asserted arising out of his employment as a teachercounselor with TUSD. The summary disposition resulted in the dismissal of the complaint.

TEA is a labor organization representing the teachers employed by TUSD. In 1980 the two entities entered into a "Consensus Agreement" whereby certain procedures for the filing and consideration of teachers' grievances, together with many other rules and regulations, were established. Article Five of the agreement provides that a teacher with a complaint first present it orally to his immediate supervisor (Level One). If the complaint is not resolved, a formal written grievance may to [sic] be presented to and decided by the supervisor (Level Two). Level Three consists of an appeal either by the employee or TEA

to the district superintendent. The superintendent's decision is the last level for all grievances except those alleging the violation of a particular clause(s) of the consensus agreement. As to such an alleged violation, the agreement provides for binding arbitration. However, only TEA on the teacher's behalf and not the individual teacher may invoke this Level Four procedure.

The appellant filed a total of nine grievances under this procedure. One was resolved. As for the other eight, the appellant requested TEA to take them to arbitration and TEA refused. This refusal constitutes the basis for this superior court complaint.

Other facts which we consider material are as follow. The appellant was never a member of TEA, although his employment contracts bound him to the rules in the consensus agreement. He was a tenured teacher with some 29 years of service in TUSD. He retired in August 1983 since he was not allowed to continue his employment beyond age 70. He was assigned to Tucson High School, a TUSD school, during the time the grievances arose.

Gilbert R. Carrillo was the principal at Tucson High School during all of the incidents involved in the grievances, but he is no longer with TUSD.

On appeal the following arguments are advanced:

1) The consensus agreement is illegal because it is an illegal delegation of the powers of the TUSD Board;

2) The agreement is illegal because it violates the Arizona right-to-work law;

3) If not illegal, in toto, the agreement contains an illegal delegation of the decision whether to arbitrate;

4) The appellant is illegally deprived of his right to represent himself beyond Level Three;

5) The grievance procedure is discriminatory;

6) TUSD and TEA breached the agreement for several reasons;

7) The appellant must have some remedy beyond Level Three, and

8) TEA has intentionally caused him emotional distress by refusing to provide Level Four arbitration.

We affirm.

The grievances submitted may be summarized as follows:

Grievance No. 1 is based on a remark by Carrillo to Williams in October 1979. Williams requested that Carrillo be ordered to apologize to him because he was demoralized by that remark.

Grievance No. 2 requested that Carrillo be ordered to apologize and be removed from his duties as principal because he did not answer a letter written to him by Williams. The letter was answered, though by a subordinate, the Chair of Williams' department. It was based on events that occurred in July and August 1980.

Grievance No. 3 was resolved.

Grievances Nos. 4 and 5 allege that Williams was removed from his duties as "Cafeteria Supervisor" on August 20, 1980, and that Carrillo's assistants failed to give Williams a new supervisory job.

Grievance No. 6 alleges that a vacancy for the freshman boys' basketball coach position was not advertised in August 1980. He wants the job and back pay.

In Grievance No. 7 Williams alleges he was denied a meaningful opportunity to present his qualifications to act as head girls' varsity basketball coach to a panel convened to interview candidates. He alleges this occurred on August 20, 1980.

Grievance No. 8 was based on an event that occurred on January 16, 1981. On that date Carrillo assigned Williams the duties of "permanent substitute". Williams was "demoralized by that action," but he lost no money or fringe benefits. (Since the grievance was filed, the Governing Board of TUSD adopted a policy prohibiting any certified employee from ever serving as a "permanent substitute" again).

Williams final grievance, No. 9, arose out of an act alleged to have occurred in the meeting held on the first eight grievances required by the first step of the grievance procedure.

Williams claims he was "demoralized" because Carrillo yelled at another administrator who was present. For this, Williams requests Carrillo's removal as principal.

At the outset we make the following observations. All of the relief sought by way of requiring TUSD to take some action with regard to Carrillo is unavailable since he is no longer a TUSD employee. Likewise, since the appellant has now retired and none of his complaints concern that retirement, he cannot be reinstated or "instated" to any assignment in TUSD. That relief is not available. Further, none of the rights which the appellant claims were violated are "protected rights," except the alleged right-to-work violation. Nothing in the record supports any violation of his right to work. He does not content that TUSD or TEA based any decision or took any action because of race, national origin, sex, age or religion, see A.R.S. §41-1463, nor does he allege a violation of any First Amendment or other constitutional rights.

"Neither damage or loss of income in consequence of the action of government, which is not an invasion of recognized legal rights, is, in itself, a source of legal rights in the absence of constitutional legislation recognizing it as such." Perkins v. Lukens Steel Company, 310 U.S. 113, 60 S.Ct. 869, 84 L.Ed. 1108 (1940).

> "A cause of action arises out of an antecedent primary legal right with which the law invests a person and for the infringement of which it gives him a remedy. The right to maintain an action depends upon the existence of a cause of action which involves a combination of a right on the part of the plaintiff and the violation of such right by the defendant. It is axiomatic that there can be no wrong without a corresponding right, and no breach of duty by one person without a corresponding right belonging to some other person. The existence of a legal right is, accordingly, an essential element of the cause of action, inasmuch as a plaintiff must recover on the strength of his own case instead of on the weakness of the defendant's case, since it is his right, instead of the defendant's wrongdoing, that is the basis of recovery. That right or duty means a legal right or duty, and not a mere moral obligation which is enforceable neither in law nor in equity...." 1 Am.Jur.2d Action §59, pp. 590-1.

See also Boyer v. Atchison, Topeka and Santa Fe Railway Company, 34 Ill.App.2d 330, 181 N.E.2d 372, 96 A.L.R. 2d 400 (1962); Mitchell v. Atlas Roofing Manufacturing Company, 246 Miss. 280, 149 So.2d 298 (1963).

Thus not only do we believe summary disposition in the trial court was proper, we find this appeal to be frivolous. From our examination of the record it appears that the appellants are attempting to use the courts to somehow redress alleged wrongs for which they have no legal or equitable remedy. For example, Grievance No. 1 sought to order an apology from the principal. Although the prayer of his complaint does not seek such an apology, it does pray for an order requiring TUSD "to insure that the conduct of its agents and employees toward him is professional and courteous." Our courts do not exist for that kind of purpose. See Annotation in 47 A.L.R.2d 319 discussion the maxim "de minimus non curat lex," the law does not concern itself with trifles. The same can be said of any relief claimed in the complaint because of Grievance No. 2, the failure

to answer his letter; Grievance No. 8, his assignment as a "permanent substitute"; and Grievance No. 9.

The appellant's contract containing the grievance procedures which he utilized required him to observe certain specified time limits for the filing of a grievance. Thus at level one he was obliged to file within 15 working days. Except for grievances 8 and 9, none were filed within anywhere close to that time. The grievances were all first presented in January 1981. The informal conference with his immediate supervisor was held, on all the grievances, on January 23, 1981. This was one of the reasons given for denial of those grievances. When asked in deposition why he had not filed his grievances sooner, the appellant replied, "[b]ecause I didn't feel like it." It is inconceivable that the appellant can contend that this court should order TUSD to now pay him for a part-time supervisory position from August 1980, give him the position of freshman boys' basketball coach with pay from August 1980, and also make him head girls' varsity basketball coach at the same

time. These positions were filled before his grievances were filed.

The record presented to the trial court clearly demonstrates that the appellant has no evidence to support his claim of intentional infliction of emotional distress.

> "There are four elements which must coincide to impose liability for intentional infliction of emotional distress: (1) The conduct must be intentional or reckless; (2) The conduct must be extreme and outrageous; (3) There must be a causal connection between the wrongful conduct and the emotional distress, and (4) The emotional distress must be severe." Venerias v. Johnson, 127 Ariz. 496, 499, 622 P.2d 55 (App. 1980).

Assuming, arguendo, some wrong on the part of TEA,against whom this claim is asserted, at least elements two and four are missing. The appellant presented the trial court with no evidence showing any extreme and outrageous conduct. While TEA did refuse to take the grievances to arbitration, a decision which we would affirm, affidavits of each of the members of its board which made this decision were filed in support of its separate summary judgment motion. These stated, in substance, that

the appellant's nonmembership in TEA had nothing to do with their decision, that it was not even discussed, and that membership in the organization never plays a part in their decision-making process.

The most significant evidence before the trial court, however, concerned the fourth element, the severity of the claimed distress, or, in this case, the nonseverity. To illustrate this point we quote at length from the appellant's deposition:

> "Q. You just told me you experience emotional distress.
>
> A. Yeah, I didn't like it. Or I don't like it. I don't like it. That is all,
>
> Q. Did you experience any sleeplessness as a result of Mr. Carrillo's ---
>
> A. No, I don't lose any sleep over Carrillo. I sleep very well.
>
> Q. Did you see a psychiatrist as a result of ?
>
> A. No, I don't even know any psychiatrist.
>
> Q. Did you see any medical profession?
>
> A. No, not about that, no.

Q. Dd [sic] you suffer any anxiety, depression?

A. No.

Q. Sleeplessness?

A. No, because I know Carrillo, I've known him since 1958. that's what I've come to expect from somebody like him.

Q. As a result of this conversation in October of 1979, what emotional distree did you ---

A. I didn't like it. I was very resentful. I didn't like it."

The deposition went on concerning one of his other grievances, the permanent substitute grievance.

"Q. So fiscally you lost no money as a result of ---

A. That's right.

Q. --- you as being a permanent substitute?

A. I lost no money.

Q. You lost no fringe benefits?

A. No.

Q. No opportunities to invest money, noting financially?

A. Yeah, that's right.

Q. So you were demoralized and it was bad for your morale?

A. Yeah, that's right.

. . .

Q. Did you suffer any emotional distress as a result of those two?

A. Yes, very humiliating to be picked on.

Q. As a result of that humiliation, did you suffer any inability sleep?

A. I sleep very well. I never lost any sleep.

Q. As a result of that humiliation, did you suffer any ability [sic] to eat?

A. Uh-uh. I eat very well."

Mr. Williams continued:

"Q. Continued to eat and sleep well as a permanent substitute?

A. Yes, Yes, I did.

Q. As a result, the humiliation that you claimed occurred as a result of being a permanent substitute, did you become depressed or anxious?

A. No. I'm not depressed because I'm used to this. I'm used to this sort of treatment from District No. 1. I'm used to it. You know, it goes on and on for thirty-one years. I can take it.

Q. Did it interfere in any way with your personal relationship with your spouse and other people?

A. No, no, no.

Q. Did you see a psychiatrist about the humiliation?

A. I don't know any psychiatrist.

Q. Did you start drinking or increase drinking as a result of that humiliation?

A. I don't drink at all. I don't drink or smoke either one; perfect.

Q. No change in your normal routine as a result of being a permanent substitute?

A. No. Just more resentment against Carrillo. That's it."

Regarding another one of his grievances, Mr. Williams testified:

"Q. Did John Williams suffer any emotional distress as a result of it?

A. Yes, it's irritable. More resentment.

Q. But I take it it didn't interrupt any of your vital life functions as a result of it?

A. No, it didn't. Ate the same and worked the same.

Q. And you didn't lose any money as a result of that?

A. No money."

In essence, Mr. Williams testified in his deposition that he suffered no monetary loss, didn't lose any sleep, was not hampered in his every day life functions, sought no medical attention, took no medication, had no problems with working, and needed no care. This falls short of the standards set forth in Venerias v. Johnson, supra. In Venerias, the court found a failure to prove emotional distress when there was no indication that any action caused a loss of earnings, there was no physical damage, there was no medical attention sought, and there was no hampering of functions. Thus, if one compares the Venerias case with the Williams case, it is clear that the appellant has not presented sufficient evidence to allow the case to proceed on that issue.

As noted in Venerias:

> "We must conclude that the alleged nervousness suffered by Venerias was not as a matter of law so intense as to constitute the severe emotional distress required to recover for the tort of intentional infliction of emotional distress." 127 Ariz. at 500.

We have intentionally not discussed, seriatim, the legal issues presented by appellant because it is unnecessary. Assuming, arguendo, that there is something illegal about the consensus agreement, we are unable to find any theory upon which the appellant could recover in any event. Assuming the agreement is lawful, the record demonstrates no actionable wrong, and in either event the damages, if any, are de minimus.

Affirmed.

BEN C. BIRDSALL,
Chief Judge

APPENDIX "B"

Arizona Supreme Court
Denial of Review

APPENDIX "B"

SUPREME COURT
STATE OF ARIZONA

eptember 14, 1984

E: JOHN W. WILLIAMS et ux vs. TUCSON UNIFIED SCHOOL DISTRICT NO. 1 OF PIMA COUNTY/TUCSON EDUCATION ASSOCIATION
Supreme Court No. 17608-PR
Court of Appeal No. 2 CA-CIV 4927
Pima County No. 196770

REETINGS:

The following action was taken by he Supreme Court of the State of Arizona on eptember 13, 1984, in regard to the above-eferenced cause:

"ORDERED: Petition for Review = DENIED."

Record returned to the Court of ppeals, Division Two, Tucson, this 14th day f September, 1984.

. ALAN COOK, Clerk

APPENDIX "C"

Arizona Court of Appeal
Dismissal of Petition
for Rehearing

APPENDIX "C"

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

No. 2 CA-CIV 4927

JOHN W. WILLIAMS and WINIFRED WILLIAMS, husband and wife,

Plaintiffs/Appellants,

v.

TUCSON UNIFIED SCHOOL DISTRICT NO. 1 OF PIMA COUNTY, a political subdivision of the State of Arizona; and TUCSON EDUCATION ASSOCIATION, an Arizona corporation,

Defendants/Appellees.

IT IS ORDERED that the Motion for Reconsideration is stricken since it is not directed solely to discussion of specific misstatements of fact or law contained in the decision which should be corrected. See Rule 22(c), Rules of Civil Appellate Procedure, 17 A.R.S., or Rule 31.18, Rules of Criminal Procedure, 17 A.R.S, and the comments to each of said rules.

IT IS FURTHER ORDERED that no services performed or costs incurred in the preparation and

filing of the motion may be included in any statement of costs or claim for attorney fees presented to the court, including costs or fees of appointed counsel representing indigent defendants.

DATED: May 2, 1984.

BEN C. BIRDSALL
Chief Judge

APPENDIX "D"

Judgment to be Reviewed

Arizona Superior Court
Judgment

APPENDIX "D"

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

No. 196770

JOHN W. WILLIAMS and WINIFRED WILLIAMS, husband and wife,

Plaintiffs,

vs.

TUCSON UNIFIED SCHOOL DISTRICT NO. 1 OF PIMA COUNTY, a governmental agency; EVA K. BACAL, THOMAS J. CASTILLO, LAURA T. ALMQUIST, RAUL M. GRIJALVA, and THOMAS W. WRIGHT, Members of the Board of Education of Tucson Unified School District No. 1 of Pima County; TUCSON EDUCATION ASSOCIATION, an Arizona corporation,

Defendants.

This action having come before the Court to be heard on March 16, 1983, on three Motions for Summary Judgment, one dated November 4, 1982, filed by the Defendants Eva K. Bacal, Thomas J. Castillo, Laura T. Almquist, Raul M. Grijalva, Thomas W. Wright and Tucson Unified School District No. 1 of Pima County (TUSD), one dated December 14, 1982, filed by Defendant Tucson Education Association (TEA) and one dated January 17, 1983, filed by Plaintiffs;

John W. Williams and Winifred Williams (Williams), the Plaintiff, John W. Williams appearing in person and through his attorney, Hayes, Busby & McCracken, P.C., by Catherine M. McCracken, the Plaintiff Winifred Williams, not appearing personally but appearing through her attorney, Hayes, Busby & McCracken, P.C., by Catherine M. McCracken, the Defendant TEA, appearing through its attorney, Gaynes & Rockafellow, P.C. by Jeffrey J. Carter, Defendants, Eva K. Bacal, Thomas J. Castillo, Laura T. Almquist, Raul M. Grijalva and Thomas W. Wright, not appearing personally, but appearing through their attorney, DeConcini, McDonald, Brammer, Yetwin & Lacy, P.C., by William B. Hanson and Defendant, TUSD, appearing through its attorney, DeConcini, McDonald, Brammer, Yetwin & Lacy, P.C., by William B. Hanson;

The Court having jurisdiction of the subject matter of the action, the Court having jurisdiction of the parties, the Court having read and considered the memoranda submitted by the attorneys for the parties in support of their respective positions and in opposition to the

position of their opponents, the Court having considered the oral arguments by the attorneys for the parties, and the Court having taken the matter under advisement; and,

The Court now finding that the material alleged facts in the case are not substantially controverted, it finding that Plaintiff John W. Williams was at all times material to the action a certified employee under contract with Defendant, Tucson Unified School District No. 1 of Pima County, Arizona, that the employment relationship between Plaintiff, John W. Williams and Defendant, Tucson Unified School District No. 1 of Pima County, Arizona, is governed by rules adopted by the Governing Board of Tucson Unified School District No. 1 of Pima County, Arizona, known as "the 1980 Consensus Agreement", that those rules were a part of the employment contract of Plaintiff, John W. Williams with Defendant, Tucson Unified School District No. 1 of Pima County, Arizona, that nothing contained in those rules violates any statute or constitutional provision, that the Defendant, Tucson Education Association

had no fiduciary duty to Plaintiff, John W. Williams, ~~and that nothing done by Defendant, Tucson Education Association, under the contract of employment between Plaintiff, John W. Williams and Defendant, Tucson Unified School District No. 1 of Pima County, Arizona was improper, discriminatory, unreasonable or outrageous~~, and all Defendants being entitled to judgment as a matter of law,

IT IS HEREBY ORDERED that:

1. The Motion for Summary Judgment of Defendant, Tucson Education Association, be, and it hereby is, granted, dismissing with prejudice Plaintiffs' Complaint and awarding it its costs of suit.

2. The Motion for Summary Judgment of Defendants, Eva K. Bacal, Thomas J. Castillo, Laura T. Almquist, Raul M. Grijalva and Thomas W. Wright and Tucson Unified School District No. 1 of Pima County, Arizona, be, and it hereby is, granted, dismissing with prejudice Plaintiffs' Complaint and awarding it its costs of suit.

3. The Motion for Summary Judgment of Plaintiffs, John W. and Winifred Williams, be, and it hereby is denied.

DATED: April 8, 1983.

LILLIAN S. FISHER
Judge of the Superior Court

APPENDIX "E"

Arizona Superior Court
Minute Entry Order

APPENDIX "E"

ARIZONA SUPERIOR COURT
PIMA COUNTY

No. 196770

JOHN W. WILLIAMS, et ux.,

Plaintiffs

TUCSON UNIFIED SCHOOL DISTRICT, etc.,

Defendants.

UNDERVISEMENT:

The Court having taken the matter under adivsment, now therefore,

The Court notes that the material alleged facts in case are not substantially controverted and concludes as a matter of law:

1. The consensus agreement does not violate constitutions or statutes.

2. That the Tucson Education Association had no fiduciary duty to plaintff.

3. That the conduct of the Tucson Education Association was not, as a matter of law, outrageous.

WHEREFORE,

IT IS HEREBY ORDERED that the plaintiff's motion for summary judgment is denied.

IT IS FURTHER ORDERED that the motion of defendant Tucson Unified School District, for summary judgment is GRANTED.

IT IS FURTHER ORDERED that the motion of defendant Tucson Education Association for summary judgment is GRANTED.

IT IS FURTHER ORDERED that the attorneys for the defendants prepare written forms of order for the Court's signature.

APPENDIX "F"

Consensus Agreement

CONSENSUS AGREEMENT

Between
Tucson Unified School District
And
Tucson Education Association

July 1, 1980 through June 30, 1982

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THIS CONSENSUS AGREEMENT HAS BEEN PROMULGATED BY THE TUCSON UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION AND THE TUCSON EDUCATION ASSOCIATION.

PREAMBLE

WHEREAS, the Board and the Association recognize and declare that providing quality education for students is their mutual aim, and that the character of such education depends predominately upon the quality and morale of the teaching staff, and

WHEREAS, the members of the teaching profession are particularly qualified to assist in formulating policies and programs designed to improve educational standards, and

WHEREAS, attainment of the objectives of the educational program conducted in the Tucson Unified School District requires mutual understanding and cooperation between the Board, the Superintendent and adiministrative staff, and the teachers, and further, that such understanding and cooperation are best fostered through good-faith negotiations between the Board and the Association with a free and open exchange of views, and

WHEREAS, the parties have reached certain understandings which they desire to confirm in this Consensus Agreement.

Now, therefore the parties agree as follows:

ARTICLE ONE

Definitions

1-1 The term TEACHER shall mean any or all members of the Association's negotiating unit, which consists of all full time and part time certificated teaching personnel, including classroom teachers, counselors, librarians, social workers, homebound teachers, department chairpersons, special ed teachers, resource teachers, teachers on leave, and subject/program specialists. All teachers shall be paid according to the teachers' salary schedule. Certificated employees who have 50% or more of their time assigned to administrative duties shall not be considered as teachers.

1-2 The term BOARD as used in this Agreement shall mean the Board of Education of Tucson Unified School District.

1-3 The term DISTRICT as used in this agreement shall mean the Tucson Unified School District.

1-4 The term ASSOCIATION as used in this Agreement shall mean the Tucson Education Association. Wherever the term ASSOCIATION is used it is understood that the PRESIDENT of the Association, or his/her designee acts for the Association.

1-5 The term PRINCIPAL shall mean any building administrator or the administrator of any work location or functional division in the school district.

1-6 The term DAYS shall mean working days. Working days are considered to be those exclusive of holidays and weekends. During the school year working days shall mean teaching days plus duty days. During the summer, working days will be

those when the District's Central Administrative offices are open for business with the public.

1-7 The term FAMILY shall mean parents, foster parents, step-parents, grandparents, spouse, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, anyone in the metropolitan Tucson area for whom the teacher has major responsibility or established resident within the household.

1-8 The term TEACHER TRAINEES shall mean student teachers or any individual participating in a teacher education program that involves the monitoring of and/or participation in teacher activities.

1-9 The term SENIORITY as used in this agreement mean the status of teachers with respect to total length of full-time teaching service with the District. Seniority shall be computed from the teacher's first day worked since the most recent date of full-time employment.

Part-time teachers shall attain seniority only in relationship to other part-time teachers.

In the event two or more teachers began work on the same date, their seniority rank shall be determined by lottery.

ARTICLE TWO

General Provisions

2-1 Discrimination

A. The Board shall not discriminate against any teacher on the basis of

participation or lack of participation in the Association's activities.

B. The rights, privileges and benefits provided by virtue of this Agreement shall be applied equitably to all teachers.

2-2 Board Policy

This Agreement constitutes officially adopted Board policy for the term of said Agreement, and the Board and the Association will carry out the commitments contained herein and give them full force and effect.

2-3 Board Powers

The Board and the Association recognize that the Board has certain powers, discretions and duties that, under the Constitution and Laws of the State of Arizona, may not be delegated, limited or abrogated by agreement with any party. Accordingly, if any provision of this agreement or any application to any teacher covered hereby, shall be found contrary to law, such provision or application shall have effect in the law only to the extent permitted by law, but all other provisions or applications of this Agreement shall nevertheless continue in full force and effect.

2-4 Alteration

No change, rescission, alteration or modification of this Agreement in whole or in part shall be valid unless the same is ratified by both the Board and the Association and endorsed in writing hereon.

2-5 Control

The provisions of this Agreement shall control where any conflict exists between this Agreement and Board policy, practice, custom writing or intentions not incorporated in this Agreement.

ARTICLE THREE

Association Rights

3-1 Facilities

A. The Association and its representatives shall be permitted to transact Association business on school property and have the right to use school facilities at reasonable times provided that it does not interrupt scheduled classroom activities or other school functions.

B. Association meetings may be held in school facilities at any reasonable time that does not interfere with scheduled classes or other assigned duties.

3-2 Communications

A. The Association and its representatives shall have the right to post notices of activities and matters of Association concern on teacher bulletin boards. Space on at least one such bulletin board shall be provided in each school building.

B. The Association shall have the right to use teacher mail boxes and the District delivery service for communications to and from teachers.

C. The Association shall, upon request, be granted time at the end of each faculty meeting to present reports and announcements.

D. The Association shall be placed on the agenda of the District's orientation program.

E. As respects to Section 3-2A and 3-2B above, such use of bulletin boards or mail boxes shall be limited to Association matters authorized by a responsible Association representative, as evidenced by the Association logo. The responsible Board supervisor at the building, or his/her designee, shall be given a copy of matters posted or deposited in teacher mail boxes prior to actual posting or depositing. Documents deposited or posted may not include any defamatory material or advocate insubordinate acts.

3-3 District Information

A. The District agrees to furnish the Association available information concerning the financial resources of the District, including but not limited to financial reports, tentative budgetary requirements and allocations, agendas and minutes of Board meetings, and seniority lists. The District also agrees to provide the Association with information needed by the Association to develop constructive negotiations proposals, provided, however, that the District shall not be required to prepare reports or surveys.

B. The Association shall receive copies of appropriate new or

modified fiscal, budgetary, or construction programs at such times as they are transmitted to Board members for final actions.

C. All Certificated vacancy notices and transfer lists will be sent to the Association at the same time they are sent to the schools.

D. The Association will be provided with the names, addresses and assignments of all teachers hired by the District within twenty (20) days of the hiring of each teacher. Once a month the District will also provide the Association with a current printout showing the teachers assigned to each building.

3-4 TEA Representatives

A. Members of the TEA Executive Board shall be permitted to leave the buildings by 3:30 p.m. to attend regularly scheduled Executive Board meetings, provided that it does not interfere with their scheduled class time or other duties.

B. TEA Faculty Representatives shall be excused from extra duties to the extent provided by past practice.

C. Past practice concerning released time for TEA Representatives shall be continued.

3-5 Association President

The Association President shall be entitled to an unpaid leave during the term of his/her office. All benefits to which the Association President was entitled at the time of his/her unpaid leave, including unused accumulated sick leave and credits toward sabbatical

eligibility, will be restored to the Association President upon his/her return to active employment and the Association President shall be placed on the same position of the salary schedule as if he/she had taught in the District during the unpaid leave of absence as Association President.

3-6 Within fifteen (15) days of ratification of the Agreement the Board shall have sufficient copies thereof prepared and delivered to each teacher in the District and one hundred fifty (150) copies to the Association.

3-7 Payroll Deduction

A. Upon receipt of written authorization from individual members, the Board agrees to deduct from the salary of members of the Tucson Education Association the annual amount due and payable by the member (as now fixed and as hereafter increased or changed) as certified by the Association. The Board further agrees to promptly transmit all such monies so deducted to the Association on a bi-monthly basis.

B. The member's written authorization shall remain in effect during the term of employment of the member unless a member revokes his/her authorization. Revocation shall be accomplished exclusively in the following manner. The individual member shall initiate the requested revocation by providing written notice to the Association no later than September 1 of each year. The Association shall submit all revocations to the District no later than October 1 of each year.

C. The deductions shall be made in equal amounts starting with the first full pay period after the start of the school year, or the first full pay period after the District receives the member's authorization.

D. If authorized by the individual member, in the event the member's employment is terminated by resignation or otherwise, the balance of dues for that year shall be deducted from the final salary warrant. If the balance due the Association is greater than the final salary warrant, the Board neither has liability for the difference, nor any obligation to recover said amount for the Association.

3-8 Consultation

A. Upon request of the Association or the District, the Association and District agree to meet and consult upon matters of concern.

B. The District reserves the right to consult with any individual or organization on any topic, but will negotiate only with the Tucson Education Association.

ARTICLE FOUR

Negotiation Procedure

4-1 Recognition

The District recognizes the Association as the exclusive representative of all teachers in the District and will negotiate terms and conditions of employment with the Association in accordance with the following procedure:

4-2 Procedure

A. Both parties agree to negotiate in good faith. The obligation of good faith negotiations does not compel either party to agree to or to make a concession on a specific issue. The District shall make available to the Association the proposed budget for the next fiscal year as soon as it is available, including preliminary information concerning teacher salaries. The District shall provide the Association with public information requested by the Association.

B. Negotiations shall be conducted in closed session unless both parties agree to the contrary. Either party may designate its own representatives and may utilize the service of consultants.

C. Tentative agreement of individual items reached during negotiations shall be reduced to writing, dated and signed by the teams' spokespersons. Tentative agreement of individual items shall be conditional upon the approval of the entire agreement by both parties. All tentative agreements negotiated by the negotiations teams are subject to formal ratification by the members of the Association and adoption by the District. After ratification by both parties, representatives of the District and Association shall sign the agreement.

4-3 Timelines

Written proposals will be exchanged by the second Monday of February. Negotiations shall begin no later than the

fourth Monday of February. If no agreement has been reached by the fourth Monday in March as a result of good faith negotiations, either party may declare an impasse and the issues in dispute shall be submitted to mediation-arbitration.

4-4 Impasse

A. Should the District and the Association be unable to agree within five (5) working days upon a mediator-arbitrator, the American Arbitration Association shall be requested to furnish a list of five (5) mediator-arbitrators from which the parties shall select a mediator-arbitrator in accordance with American Arbitration Association rules. The format, dates, and times of meeting shall be conducted in closed sessions. The costs for the services of the mediator-arbitrator including per diem expenses, if any, and actual and necessary travel expenses and subsistence shall be shared equally by the District and the Association.

B. The mediator-arbitrator shall first attempt to resolve the dispute through the mediation process. Should this process fail, that person shall then function as the arbitrator of the issues remaining in dispute. Within ten (10) working days after the conclusion of arbitration hearings, the mediator-arbitrator shall submit a report in writing to the District and Association only and shall set forth in the report the findings of fact, reasoning, and recommendations on the issues submitted. The report shall be advisory only and

binding neither on the District or Association. Within five (5) days after receiving the report of the mediator-arbitrator, the representatives of the parties shall meet to discuss the report. No public release shall be made until after such meeting. The respective parties shall take official action on the report of the mediator-arbitrator no later than fifteen (15) days after the meeting described above.

4-5 Expiration

If recognition is lost pursuant to the following procedures, this Agreement shall be considered null and void upon the expiration date of this Agreement.

4-6 Decertification Petition

Petition

(a) A petition for an election to decertify the Association may be filed with the superintendent by a teacher within the unit or a teacher organization.

(b) The petition shall contain the following information:

(1) The name, address and telephone number of the petitioner, and the name, address and telephone of the agent to be contacted, if any.

(2) A description of the established unit.

(3) The approximate number of teachers in the established unit.

(4) A statement that the teachers in the established unit no longer desire the Association as their exclusive representative.

(c) The petition shall be signed by at least 30 percent of the teachers in the established unit.

(d) The petitioner shall concurrently serve a copy of the petition, to the District, the Association and any other teacher organization known to claim to represent teachers in a unit.

Election

(a) Upon receipt of a petition for decertification, the Board may conduct a representation election under impartial auspices. The costs for such an election shall be defrayed equally by the petitioning organization and the District.

(b) A petition shall not be considered whenever a representation election has been held within the 12 months immediately preceding the filing of the petition. If there is an existing agreement in effect, the petition must be initiated, signed, and delivered to the Board within 90 to 120 working days prior to expiration of the agreement to fulfill the requirement for receipt of a valid petition for decertification.

ARTICLE FIVE

Grievance Procedure

5-1 Definitions

A. Grievance

A grievance means a complaint based upon an event or condition under which an employee works allegedly caused by misinterpretation or inequitable application of this Agreement, any policy, rule, practice, or regulation of the Board.

B. Immediate Supervisor

1. In any school, the immediate supervisor is deemed to be the building principal, or principal designee, or acting principal in his/her absence.

2. In the case of a teacher serving more than one school the immediate supervisor shall be deemed to be the principal(s) with whom the grievance has been filed.

3. In the case of a member of the bargaining unit, as defined, not assigned to an individual school, the immediate supervisor is deemed to be the coordinator or the director by whom the employee is evaluated.

5-2 Purpose

The purpose of this grievance procedure is to secure equitable solutions to a claim of the aggrieved person in an

equitable manner and at the lowest possible level.

5-3 Informal Complaint Procedure: Level One

A teacher with a complaint will first present it orally and informally to the immediate supervisor within fifteen (15) working days from the occurrence of the alleged violation, or fifteen (15) working days from the time the alleged violation is know to the teacher or the Association.

5-4 Grievance: Level Two

A. If resolution is not reached by means of the informal complaint procedure, the employee shall have five (5) working days from the date of the informal complaint meeting to file a written formal grievance. The grievant may present a formal claim in writing to the immediate supervisor, either directly or through the Association.

B. A written grievance shall meet the following specifications:

·It shall be specific.

·It shall contain a synopsis of the facts giving rise to the alleged violation or misinterpretation.

·It shall contain the specific section of this Agreement, policy, rule or regulation which has been allegedly violated.

·It shall state the relief requested.

·It shall contain the date of the alleged violation.

'It shall be signed by the grievant.

C. Within five (5) working days after receiving the written claim of grievance, the immediate supervisor shall state the decision in writing and forward to the superintendent or designee, and the grievant and the Association.

5-5 Grievance: Level Three

Within ten (10) working days after receiving the written decision of the immediate supervisor the aggrieved person may, either in person or through the Association submit a written appeal from the immediate supervisor's decision to the superintendent or superintendent's designee. Said appeal shall be accompanied by copies of the original claim of grievance and the immediate supervisor's written decision, and shall state with particularity objections to that decision. The superintendent or designee shall investigate the claim, evaluate the evidence, and within ten (10) working days after receiving the written appeal, state in writing a decision.

5-6 Grievance: Level Four

Only grievances arising out of an alleged violation of a particular clause(s) of this Agreement may be submited [sic] to level four (4). If the response of the third level of review does not result in resolution of the grievance, the Association on behalf of the he grievant may invoke this level four (4) procedure within ten (10) working days of receipt of the level three (3) decision. The superintendent or designee and the Association shall agree on an arbitrator, and if they are

unable to agree on an arbitrator, a request will be submitted by any or all of the parties to the American Arbitration Association for the selection of an arbitrator in accordance with AAA rules.

5-7 Arbitration

A. The arbitrator shall be bound by the following:

1. The arbitrator shall neither add to, detract from, nor modify the language of this Agreement.

2. The arbitrator shall expressly be confined to the precise issues submitted by the parties, and shall have no authority to consider any other issue not so submitted.

B. The findings and recommendations for relief of the arbitrator shall be binding on all parties and the grievance shall be considered permanently resolved and there shall be no judicial review. A copy of the decision shall be submitted to both parties within thirty (30) days of the hearing. The fees and expenses of the arbitrator shall be borne equally by the parties. All other expenses shall be borne by the incurring party.

5-8 Time Limits

Failure at any step of this procedure to communicate the decision on a grievance within the specified time limit shall permit the aggrieved to proceed to the next step.

Failure at any step to appeal a grievance to the next higher step within the specified time limits shall be deemed to be acceptance of the decision rendered at that step. Time limits specified in the grievance procedure may be extended in any specific instance only by mutual written consent of both parties.

5-9 Non-Discrimination

Neither the District no the teacher shall discriminate against the other because of their exercise of rights granted by this claim.

5-10 Group Grievances

If in the judgment of the Association representative, the grievance affects a group of employees, the Association may persue [sic] the grievance at the appropriate level.

5-11 Hearing and Decisions

At each of the above three (3) levels, the aggrieved person and his/her representative shall be given a reasonable opportunity to be heard. All decisions at each level shall be in writing and shall include supporting reasons. Copies of all decisions and recommendations shall be promptly furnished to all parties in interest including the aggrieved person and his/her representative.

5-12 Forms

Forms for filing grievances, serving notices, taking appeals, making reports and recommendations and other necessary or related proceedings, shall be prepared by the administration after consultation with the Association. Multiple copies, one (1) copy to be

retained by the aggrieved person, will be available upon request from the Personnel Department of the District or from the office of the Association.

5-13 Information

Reasonable access shall be made available to records and files of all unprivileged information necessary to the determination and processing of any grievance.

ARTICLE SIX

Transfer Procedure

6-1 Assignment

A. At the beginning of service of Tucson Unified School District, teachers shall be employed for the District at large to meet District goals, and shall be assigned to specific schools to implement their educational programs in accordance with District goals.

B. Given the preeminence of District goals, request for teacher transfer may be initiated by either the teacher or the District. Staffing, and transfer which affects staffing, is determined on the basis of personnel who:

1. Meet the requirements necessary to implement the educational program of the school.

2. Use their knowledge of cultural, linguistic, and socioeconomic diversity in the teaching-learning process.

3. Improve the ethnic balance of the staff whenever possible.

4. Contribute to the overall balance of the schools as to teacher education, experience, and certification.

5. Desire to teach in the particular school.

6-2 Transfers

A. Requests for teacher transfer may be initiated by either the teacher or the District. Ordinarily, transfers shall become effective at the beginning of a new school year. Whenever a transfer occurs during the school year, the teacher shall be allowed two (2) working days relieved of regular duties to complete the transfer.

B. Prior to filing with the Federal Court any compliance plan for transfer, the Association shall be consulted.

6-3 Vacancies

A. Beginning no later than March 15, the Personnel Department shall, in cooperation and with the assistance of the District, area and building administrative and supervisory staff attempt to fill teaching position vacancies for the following school year. A vacancy is a teaching position previously held by a member of the bargaining unit, a newly created teaching position, or an extra duty teaching position. All vacancies shall be filled by members of the bargaining unit if applicants who meet the assignment

criteria listed in 6-1 above are available.

B. Once the assignment criteria listed in 6-1 above are met, vacancies shall be filled according to the following priorities:

1. District-initiated transfers.

2. Teacher-initiated transfers including teachers returning from leaves of absence.

3. Newly-hired teachers.

C. When District goals are adequately provided for, the teacher with seniority in the District shall be given the first consideration. If District seniority is equal, then building seniority shall prevail.

6-4 Posting

A. During the school year, the Personnel Department shall distribute to all schools for posting, a list of all vacancies known to occur. All posting of vacancies shall be made no less than five (5) working days before the deadline for application, and shall include assignment criteria. Vacancies shall be filled as soon as practical.

B. Beginning no later than September 1, 1980, a comprehensive list of completed transfers shall be distributed bi-weekly to each school and the Association for posting. This distribution shall continue throughout the year.

6-5 Summer Procedure

Whenever vacancies occur during normal summer months when regular school is not in session, the following procedure, in addition to the procedures herein outlined, shall be followed:

1. Teachers with specific interest in possible vacancies will notify the Personnel Department of such interest, in writing, during the last regular week of school and shall include a summer address.

2. Should a vacancy occur, teachers who have expressed an interest in said position shall be contacted in writing by the Personnel Department and notified of the vacancy.

3. The teacher so notified shall have the responsibility of contacting the Personnel Department indicating their interest in said position within five (5) working days of receiving such notification.

6-6 Teacher-Initiated Transfers

A. When a teacher applies for transfer, the position held to that time shall not be declared vacant until the voluntary transfer has been made.

B. Teachers who desire a change in grade or subject assignment or who desire to transfer to another building may file a written statement of such desire with the Personnel Department through the building principal beginning the first working day in January and extending through March 1. Such statement shall include the grade or subject to which the teacher

desires to be transferred, in order of preference. No teacher-initiated transfer request shall be denied arbitrarily, capriciously, or without basis in fact.

6-7 District-Initiated Transfers

A. When transfer other than by request is necessary or appears to be necessary, a personal conference shall be initiated with the teacher by any of the following: coordinator; supervisor or director; principal; director of personnel; member of the superintendent's staff; or superintendent. Such conferences shall be held at least one (1) day, but not more than five (5) days, prior to providing written reasons and notification of transfer. During said conference, the reasons for transfer will be discussed and the teacher will have an opportunity to express any concerns regarding such transfer.

B. Teachers transferred because of declining enrollment shall be given first priority in returning to the original position (school) if enrollment increases and a vacancy is created prior to the end of the current calendar year.

C. A list of all known open positions in the school district shall be made available to any teacher being considered for a District-initiated transfer. The teacher may designate preferred positions of transfer and order of preference. The teacher to be transferred shall be given adequate time off for the purpose of visiting schools at which open positions exist, not to exceed two (2) school days.

D. When it has been determined that District-initiated transfer is necessary, first consideration shall be given to the following:

1. A teacher's area of competence, experience, and qualifications judged within the framework of the assignment criteria outlined in 6-1 above.

2. Length of service in Tucson Unified School District.

3. Length of service in the particular school building involved.

4. Proper application and the effect of state and federal laws regulations, and directives.

No District-initiated transfer shall be arbitrary, capricious, or without basis in fact.

6-8 Transfer of Probationary Teachers

Every effort shall be made to retain probationary teachers in the school of their original assignment during their first three (3) years. Some exceptions may occur as in the case of reduction in enrollment.

ARTICLE SEVEN

Normal Work Day

7-1 Duration

A normal work day for teachers shall be no longer than seven and one-half (7½)

hours including not less than a thirty (30) minute duty-free lunch period.

7-2 Dismissal

On days immediately prior to scheduled holidays or vacations, teachers may leave after their students are dismissed.

7-3 Planning Time

A. Uninterrupted preparation time of at least sixty (60) minutes shall be provided daily for teachers in grades K-6 within the normal work day. Preparation period adjustments may be made with the approval of the teacher if the adjustment is equivalent to sixty (60) minutes per day.

B. At least one teaching period of uninterrupted planning time shall be provided each day for teachers in junior and senior high school. Preparation period adjustments may be made with the approval of the teacher if the adjustment is equivalent to one period per day.

7-4 Student Contact Time

The amount of teacher-student contact time (teaching time) shall be no more than 320 minutes per day in grades 4-6 and no more than 285 minutes per day in grades K-3.

7-5 Field Trips

The District shall provide transportation and necessary substitutes for any approved field trips.

7-6 Elementary Parent Conference

Elementary school students shall be dismissed early four (4) half-days during the school year to grant teachers time for parent-teacher conferences.

ARTICLE EIGHT

Facilities, Equipment and Materials

8-1 Instructional Facilities

Teachers shall be guaranteed the following minimal instructional facilities equipment: adequately ventilated rooms and teacher desk and chair. The District will make provisions for lockable space for each teacher.

8-2 An area shall be provided in each school for the exclusive use of teachers as a staff lounge. The lounge shall be adequately ventilated.

8-3 The District will make provision for a telephone, in the area provided as a staff lounge, for the use of teachers to make local telephone calls.

8-4 Upon request from a teacher, the teacher shall be provided with a key to his/her classroom, and the principal may authorize teacher use of keys to the building, lounge, work areas and/or office and gates of the school.

8-5 Athletic Facilities

No teacher shall be required to create, construct, or maintain any facility.

ARTICLE NINE

Calendar

9-1 During the 1980-81 and 1981-82 school year, there shall be two hundred and two (202) contract days each year:

175 teaching days

7 duty days for preparation, inservice,and preservice activities

20 holidays/vacations

In the event that one hundred seventy-five (175) teaching days are not completed by the last scheduled teaching day of the school year, sufficient additional teaching days will be scheduled to meet the one hundred seventy-five teaching day requirement.

ARTICLE TEN

Teacher Evaluation

10-1 Purpose

The purpose of this procedure is to evaluate the progress and success of both newly employed and experienced teachers for the purpose of improving instruction. Evaluation also provides the basis for administrative decisions. Such decisions may include the employment of personnel, their assignment, the granting of tenure, promotion, demotion, or termination.

10-2 Observations

A. Formal evaluation shall only be conducted by an administrator who is not a member of the bargaining

unit. Each formal observation of classroom performance shall be made in person for a minimum of thirty (30) consecutive minutes. All monitoring or observation of the performance of a teacher shall be conducted openly and with the full knowledge of the teacher.

B. Formal evaluations shall occur prior to May 1 of each year and be scheduled so that no more than one (1) formal evaluation statement is made in any thirty (30) day period unless there is mutual agreement between the teacher and the evaluator.

10-3 Procedure

A. Prior to the first teaching day of each school year, the principal shall meet with the school's faculty for the purpose of orienting the teachers to the total evaluation plan and shall supply a copy of the Assessment and Evaluation for the improvement of Instruction Policy to each teacher. The Assessment and Evaluation Policy shall be considered as part of this Agreement by reference.

B. Self evaluation shall be urged.

C. The evaluator shall include a minimum of two (2) formal classroom observations per semester of a minimum of thirty (30) minutes each for probationary teachers, and ruing the evaluation year, one (1) formal classroom observation per semester of a minimum of thirty (30) minutes for teachers with continuing status to insure that the evaluator has the opportunity to grasp an overall concept of a

teacher's performance. The initial observation will be pre-arranged by the evaluator and the teacher.

D. The official formal evaluation statement shall be submitted in writing and signed by both the teacher and the evaluator(s) only to indicate they have seen the evaluation statement.

10-4 Formal Evaluation Conference

A. This conference shall occur within five (5) days after the formal classroom observation, if the administration and teacher are available, but not more than fifteen (15) days after the formal classroom observation. No teacher shall be required to sign a blank or incomplete evaluation form.

B. In the event that the teacher feels the evaluation was incomplete or unjust, the teacher may file the objections in writing within five (5) days of the conference between the teacher and the evaluator, and have them attached to the evaluation report to be placed in the personnel file(s).

10-5 Plans for Improvement

A. Plans for improvement shall be provided to teachers upon recognition of deficiencies.

B. Beginning with the conference after the formal classroom observations, plans for improvement shall be offered in writing to guide the individual toward the solution of this particular problem. Suggested actions may include:

1. Demonstration in an actual classroom situation.

2. Direction of the teacher toward a model for emulation, allowing opportunities for observation and consultation.

3. Initiation of conferences with evaluator and teacher to plan positive moves toward improvement of the teacher's classroom performance.

4. Guidance for the teacher toward professional growth workshops.

5. Observation, continued and sustained, by the evaluator to note the day-to-day lessons and their interrelationships.

6. Maintenance and expansion of the collection of professional literature with assigned reading, designed to suggest possible solutions to identified problems.

10-6 Follow-up Evaluation

In the event an evaluation statement results in a suggested plan for improvement, a follow-up formal evaluation shall be conducted after an interval of thirty (30) days or whatever reasonable length of time is required to correct the noted needs for improvement, such follow-up formal evaluation to note progress, or lack of progress in, or compliance with, areas in need of improvement.

10-7 Eavesdropping

The use of eavesdropping, public address, or audio systems, and similar surveillance devices shall be strictly prohibited.

10-8 Complaints

Any complaints regarding a teacher which may have an effect on the teacher's evaluation or continued employment, that are made to the administration by any parent, student or other person, shall be in writing and shall be promptly called to the teacher's attention. Said teacher shall have the right to answer in writing and the answer shall be reviewed by the administrator and attached to the complaint. Comments by the reviewing administrator shall be signed and also attached to the complaint.

10-9 Personnel File

A teacher shall have the right to review the contents of his/her personnel file and to receive copies at Board expense. A teacher shall be entitled to have a representative of the Association accompany him/her during each review. A teacher shall have the right to indicate those documents and/or other materials in the file which may be obsolete, inaccurate or otherwise inappropriate to retain. Said documents shall be reviewed by the District superintendent or his/her designee and if, in fact, they are obsolete, inaccurate, or otherwise inappropriate to retain, they shall be destroyed.

10-10 Derogatory Material

No material derogatory to a teacher's conduct, performance character or

personality shall be placed in the personnel file unless the teacher has had the opportunity to review the material. The teacher shall acknowledge that he/she has had the opportunity to review such material by affixing his/her signature to the copy to be filed with the express understanding that such signature in no way indicates agreement with the contents thereof. The teacher shall also have the right to submit a written answer to such material which shall be reviewed and signed by the Superintendent or his/her designee and attached to the file copy(ies). The signature of the Superintendent or his/her designee shall in no way indicate agreement with the contents thereof.

ARTICLE ELEVEN

Classroom Control and Discipline

11-1 A. The teacher has primary responsibility for facilitating learning and maintaining discipline in the classroom. A teacher may exclude a disruptive student from the room.

B. At the elementary level, a disruptive student may be excluded from the classroom for up to one-half (½) of the school day. At the junior high and high school levels, a disruptive student will not be readmitted to the teacher's classroom prior to the student's next scheduled class with the teacher.

C. If, after discussion of the matter with the principal or his/her designee, the teacher objects to the readmission of the disruptive student to the classroom, the matter will be referred to the

Regional Assistant Superintendent of School within twenty-four (24) hours. The disruptive student may be returned to the classroom pending the decision rendered. The Assistant Superintendent of Schools will consult with the teacher, review the facts in the case and render a decision within four (4) days following the day the disruptive student was excluded from the classroom. If a decision is not rendered within four (4) days, the teacher may exclude the disruptive student until such time as a decision is made.

D. The decision of the Assistant Superintendent of Schools shall be implemented and considered a resolution of the exclusion of the disruptive student from the classroom.

11-2 When a teacher has been assigned a student known to have serious and chronic behavorial problems that are disruptive of the learning environment, the teacher, the appropriate administrator, and other involved supportive personnel, or the child study team shall meet to develop mutually satisfactory methods of dealing with the problem, including but not limited to appropriate class size.

11-3 The joint committee on student discipline shall be continued. The committee report shall be written and will include the development of administrative regulations appropriate to students who are temporarily excluded from the classroom to another area within the school building. The committee shall submit its recommendations by February 1, 1981.

11-4 A teacher may within the confines of state law protect her/himself or other persons.

ARTICLE TWELVE

Maintenance of Benefits

12-1 Except as this Agreement shall otherwise provide, all terms and conditions of employment in effect at the time this Agreement is signed, as established by the rules, regulations and/or policies of the Board in force on said date, shall be continued until changed by the District. The District agrees to consult with the Association prior to making any change in District terms and conditions of employment not covered by this Agreement.

ARTICLE THIRTEEN

Reduction in Force

13-1 Method

A. If the economic and efficient operation of the schools makes necessary a reduction of the teaching staff, it shall be accomplished in the following manner:

Teachers with less seniority whose special skills fit the criteria written into educational programs requiring special teaching skills necessary for continuance of programs would be retained on the basis of applicable State laws and qualifications.

If a reduction of the teaching staff becomes necessary,

normal attrition will be utilized as the first means of reducing staff. Should further education become necessary, the District shall first attempt to make such reduction by means of voluntary early retirement, sabbatical leave and leaves of absence, transfer an then retain those teachers with the greatest amount of District seniority.

B. A list of the total teaching staff in the District shall be compiled starting with the person having the most seniority and continuing to the person with the least seniority. The seniority list will be delivered to the Association by October 1 of each year. In cases of reduction in staff, retention will be based upon District seniority.

13-2 Notification

A. If the Board determines that RIF may be forthcoming, this intent shall be transmitted to the Association as soon as practical. Individual teachers to the RIFed shall be notified by the Board by April 15 by certified mail.

B. In the case of reductions, a list of persons affected shall be submitted to the Association at the time of notification of the individual being released. The Association shall have the right to file a grievance on behalf of RIFed teachers if it appears that reemployment rights under this policy have been violated.

C. All person released because of staff reductions shall receive a letter from the school district stating that the loss of their positions was due to staff reduction. The District shall, upon request of the individual, send a duplicate this letter to any placement or personnel file. Said letter shall automatically be placed in the Tucson Unified School District Personnel File of the dismissed teacher.

13-3 Recall Provisions

A. All teachers released for reduction in enrollment reasons shall have the right of preferred reappointment in the order of seniority in positions that the teachers are certified to each pursuant to A.R.S. 15-257.

B. The District shall pay the full cost of the current health and life insurance benefit program of all RIFed teachers until October 1, of the following school year. After October 1, RIFed teachers shall upon request be allowed to continue their health insurance coverage by paying the premium themselves.

C. All positions of substitute teachers shall be offered to teachers on recall, in order of seniority, before any other person is offered such a position.

D. No teaching or substitute appointments shall be made by the District while there are laid-off teachers available who are qualified to fill the vacancies.

E. The District shall annually provide the Association with a current list of those teachers who have retained recall rights. The Association shall have the right to file a grievance for teachers who are not recalled if it appears that their reemployment rights have been violated.

13-4 Recall Rights

A. The District shall give written notice of recall from layoff by sending a registered or certified letter to the Association and to said teachers, at their last known addresses. It shall be the responsibility of such teachers to notify the Board of any change in address.

B. Any teachers so notified shall respond within fourteen (14) calendar days from receipt of said notice whether they accept or reject the position. If teachers reject positions for which they are certified to teach and such position is offered for which they are certified to teach and such position is offered consistent with the aforementioned provisions of this article, such teachers shall be considered to have resigned from the employ of the District and all their benefits shall cease.

C. Teachers who were previously assigned to full-time teaching positions shall be recalled to full-time teaching positions they are certified to teach provided that such teachers shall have the option of accepting any part-time teaching position that may exist and that they are certified to teach without jeopardizing their

recall status for a full-time position. Teachers who were previously assigned to part-time teaching positions shall be recalled to part-time teaching positions they are certified to teach by seniority provided that no part-time teacher shall be recalled to any part-time teaching position unless such a position is declined by all full-time teachers. Teachers will not lose their recall rights if they secure other employment during the layoff.

D. All benefits to which teachers were entitled at the time of their layoffs, including unused accumulated sick leave and credits toward sabbatical eligibility, will be restored to teachers upon their return to active employment and such teachers will be placed on the proper step of the salary schedule for teacher's current position according to the teacher's experience and education.

ARTICLE FOURTEEN

Professional Improvement

14-1 Travel Expense

If the District requires a teacher's attendance at any course, workshop, seminar, conference, or inservice training session, payment will be made for associated tuition and/or travel expense costs except that no reimbursement will be made for travel expense within the Tucson Metropolitan area.

14-2 Salary Credit

Teachers involved in professional workshop(s) specifically approved in advance for this purpose by the District, shall receive one credit hour on the salary index for each fourteen (14) hours of participation.

14-3 Compensation

A. For time spent in attendance beyond the regular work week or contract year, teachers involved in required workshops may choose to be either compensated at the teacher's daily/hourly rate based on the teacher's scheduled annual salary exclusive of extra pay for extra service, or receive credit on the salary schedule for each fourteen (14) hours of participation.

B. Advance written approval shall be secured from the District for programs required or approved by the District for which compensation or reimbursement for expenses is sought.

C. Nothing in the foregoing shall preclude a teacher from participating in any voluntary program upon terms mutually agreeable to the District and the teacher. All voluntary workshops shall be prominently advertised as voluntary.

ARTICLE FIFTEEN

Aides and Teacher Trainees

15-1 Assignment

Teacher trainees shall not be assigned to a teacher without such teacher's consent.

Aides shall not be assigned to a teacher without teacher participation in the selection process for that aide.

15-2 Duties

The teacher shall be consulted concerning the duties to be performed by aides or teacher trainees.

15-3 Termination

A teacher shall evaluate aides at least two (2) times per year. Included in the evaluations shall be the teacher's recommendation for retention of the aid.

15-4 Special Ed. Aides

Aides in Adaptive Education classrooms may have the same working day as the teacher. Such situations shall be considered on a case by case basis.

ARTICLE SIXTEEN

Substitutes

16-1 Procedure

Teachers shall be informed of a telephone number they may call to report unavailability for work. Once a teacher has reported unavailability, it shall be the responsibility of the administration to arrange for a substitute teacher.

16-2 Qualifications

Each substitute shall be certified (basic or substitute). A current list of substitute teachers shall be provided to the Association at the beginning of each semester.

ARTICLE SEVENTEEN

Class Size

17-1 Class Size

A. Kindergarten

1. Kindergarten teachers shall not be assigned more than 58 pupils on a regular basis.

2. Kindergarten teachers shall be entitled to two hours of aid time as follows:

   a. For every five pupils above 25 in each class.

   b. For every five pupils above a total of 48 in morning and afternoon classes.

   c. Allotments of aid time under (a) preclude allotments under (b) based upon the same students, but any pupils not used for aide time under (a) may be counted under (b).

   Example: A teacher with a morning class of 30 and afternoon class of 28 would be entitled to four hours of aide time.

B. Grades 1, 2, & 3

Teachers of grades 1, 2, and 3 shall not be assigned more than 31 pupils on a regular basis.

C. Grades 1 through 6 Combination Classes

Teachers of combination classes in grades 1 through 6 shall not be assigned more than 30 pupils on a regular basis and shall be entitled to two hours of aid time for every five pupils above 25.

D. The District average for class size will not exceed 29-1.

E. In consultation with TEA, District will identify the most urgent situations in which class size appears to be a major problem. The administration is directed to examine and appraise each situation with a view toward the following actions:

a. pupil reassignment

b. adequate teacher aide assistance

c. creation of an additional class in an extreme situation not solvable in any other way

d. any other appropriate solution

ARTICLE EIGHTEEN

Retirement Incentive

18-1 Incentive Pay

After ten (10) consecutive years of full time service in the Tucson Unified School District, a teacher may elect early retirement from teaching effective at the conclusion of the school year during which they reach the age of 55 or any of the succeeding school years prior to age 60. The District shall provide pay for unused sick leave to teachers upon early retirement according to the following rate. Rate of pay shall be the base salary daily rate of pay for the year in which they retire, multiplied by the number of days accumulated sick leave.

18-2 Payment

Payment shall be made in one (1) sum upon retirement except that the employee shall have the option to delay the payment until after January 1 of the year following the year in which they retire.

18-3 Optional Pre-Retirement

A. After ten (10) consecutive years of full-time service in the Tucson Unified School District, and attainment of age fifty-five (55), a teacher shall become eligible for the pre-retirement program. Application shall be made to the District Director of Personnel by April of the year preceding voluntarily elected pre-retirement. A teacher electing pre-retirement shall be issued a contract on a yearly basis for a period of up to seven (7) years or the attainment

of age sixty-two (62), whichever comes first.

B. Teachers electing pre-retirement will serve a maximum number of days per year, specified below, at mutually agreed upon services. Such services shall not include substitute teaching.

Annual compensation for pre-retirees is $4,100.00 for each year of pre-retirement through age fifty-nine (59) with a maximum of thirty (30) days per year of service; $2,050.00 for the year in which the retiree reaches age sixty (60) with a maximum of fifteen (15) days of service; and, $1,025.00 for the year in which the retiree reaches age sixty-one (61) with a maximum of seven (7) days of service.

C. Once a teacher has entered into this program, he/she may drop his/her participation at any time by notifying the District Director of Personnel in writing. Once the teacher withdraws from this program, he/she may not reenter.

D. Teachers electing pre-retirement may, upon request, continue enrollment in the District's adopted Group Health Insurance Plan. The District will continue to pay the total annual premium for the teacher for a period of up to seven (7) years, or age sixty two (62), whichever comes first.

E. Once a teacher elects to participate in the pre-retirement program, the teacher cannot return to

regular employment with the district.

18-4 Length of Service Stipend

For 1980-81 only, a service recognition equal to .0025 times his/her last year's salary, times his/her years of service will be paid upon legal retirement to any teacher who has completed 15 or more years with the district. The contract of the teacher to receive the stipend is to be rewritten on or after January 1 of the year of his/her retirement.

ARTICLE NINETEEN

Leaves of Absence With Pay

19-1 Sick Leave

A. Teachers shall be credited with a total of twelve (12) days of sick leave at the beginning of a school. For part-time teachers or teachers on extended contract sick leave is prorated according to the percentage of the school year worked.

B. Sick leave may be accumulated without limit.

C. Teachers shall be notified of their total accumulated sick leave within thirty (30) days after the opening of each school year.

D. When on authorized sick leave, no teacher shall suffer loss of leave time or salary and benefits during calendared holidays.

E. The expense of any physical or mental examination required by the District shall be paid for by the District, except for physical

examinations required of all new teachers.

19-2 Absence Due to On-the-Job Injury

In the event of absence due to injury on the job, the District will pay the necessary amount above the monies received by the employee from the Industrial Commission to provide 100% income. Accumulated sick leave will be utilized at the same percentage as the salary payments contributed by the District.

19-3 Family Illness

Sick leave may be used by a teacher in the event of a family illness requiring his or her presence. After two (2) days the District may require a doctor's statement.

19-4 Death In Family

Three days of bereavement leave, plus necessary travel time, exclusive of weekends, will be granted for a death in the family. These days will be charged to sick leave.

19-5 Special Bereavement Leave

In the event of death of a student, at lease one faculty member shall be permitted to attend the funeral without loss of leave time or compensation. In the event of death of a faculty member, close friends shall be permitted to attend the funeral without loss of leave time or compensation. Furthermore, in the event of death of a faculty member, members of the same department and/or grade level within the building shall be permitted to attend the funeral without loss of leave time or compensation.

19-6 Personal Leave

At the beginning of every school year each teacher shall be credited with two (2) days to be used for the teacher's personal leave. These two days will be charged to sick leave. All unused personal leave shall be made part of the teacher's accumulated sick leave. Personal leave days may not be taken on the day immediately prior to or after a holiday or vacation. A teacher planning to use a personal leave day or days shall notify his or her principal at least one (1) day in advance, except in cases of emergency. For part-time teachers or teachers on extended contract, personal leave is prorated according to the percentage of the school year worked. Any so-called "job-action" against the District is not a valid reason for personal leave.

19-7 Emergency Leave

Emergency leave without reduction of pay or leave shall be granted to teachers who are unable to avoid tardiness or absence due to weather, flood, fire, or so-called "Acts of God."

19-8 Judicial Leave

Teachers called for jury duty or who are subpoenaed will be paid their regular wages. They are required to remit to the school district all fees received for either jury duty or for acting as a witness within 30 days of the conclusion of jury duty service. The subpoena, or a photostat thereof, must be sent to the Personnel department.

Absences due to litigation (when the teacher is either a plaintiff or a defendant) must be charged to personal leave, vacation or personal business.

19-9 Military Leave

Teachers will receive pay for 15 calendar days in any one calendar year for required temporary military service (A.R.S 38-610).

Induction into the military for an extended period of time shall not be at District expense; however, upon return he/she will be placed in his/her former or comparable position in accordance with A.R.S. 38-298, as amended, 1964.

19-10 Sabbatical Leave

A. Sabbatical leave is granted for professional study or research which benefits the school program and pupils of the District.

Qualification --

B. Any teacher who will have completed seven (7) consecutive full years of satisfactory service in Tucson Unified School District is eligible to apply.

A teacher may be considered for a sabbatical leave, even through a leave may have been granted within the last three years.

Application --

C. Applicants shall submit their proposed sabbatical program to the sabbatical committee by March 1, for the following school year. Applicants shall be notified by the office of the Superintendent of the status of their application by April 15.

Compensation --

D. Sabbatical leaves may be granted by the Board of Education for any period of time, but not to exceed two consecutive full semesters.

Compensation for a teacher on sabbatical leave shall be one-half of the salary and fringes to which he/she is entitled by experience and education, extra assignment pay excluded.

Status While on Sabbatical Leave

E. A teacher on sabbatical leave shall be considered to be in the employ of the District and shall have a contract.

Status on Return from Sabbatical Leave

F. A teacher granted sabbatical leave must return to the District for at least one school year. If he/she chooses not to return he/she will be required to refund the amount of compensation received from the District during his period of sabbatical leave.

If leave is granted, all rights of tenure, retirement, accrued leave with pay, salary increments and other benefits provided by law shall be preserved and available to the applicant after the termination of the leave of absence.

Sabbatical Committee

G. A sabbatical committee of seven (7) members shall be appointed by mutual agreement of the District and the Association. The Committee

shall use the following criteria when reviewing the applications.

(1) Merit of the applicants proposed program

(2) Applicant's length of service in the District

(3) Distribution from the areas of elementary, junior high and secondary

H. The number of sabbatical leaves granted in any one school year shall not exceed two percent of the teachers. The sabbatical committee shall make the final recommendations for selection from the list of applicants.

19-11 Released Time

A. Released time without loss of pay may be granted for teachers to attend a specific conference or convention subject to availability of funds. First consideration shall be given to teachers on the program or holding office. Substitutes shall be provided for those teachers granted released time.

B. Released time forms must be in the Personnel Department at least one day before a meeting held within the state. Out-of-state travel requires prior approval by the Board and forms must be received in the Personnel Department by the second Tuesday of the month.

19-12 Exchange Teaching

A one-year leave of absence, with pay, may be granted to a teacher who qualifies for an exchange position.

ARTICLE TWENTY

Unpaid Leaves of Absence

20-1 Authorized Absence Without Pay

The Board may grant a leave of absence to teachers with no less than three (3) years of service, not to exceed one year for the purposes of professional study, scholarship or fellowship, travel, maternity, health, military service, training programs and other bona fide reasons. For good cause the Board may make exceptions and grant a leave of absence for teachers with less than three (3) years of experience. Upon granting the authorized absence, all rights of tenure, retirement, accrued leave with pay, and other benefits shall be preserved and available to the applicant after termination of the leave. Teachers may be granted consecutive leaves.

20-2 Extended Sick Leave

When a teacher has exhausted his/her sick leave or chooses not to use sick leave, he/she will be allowed 30 consecutive days, on an off-pay status. At the end of this period he/she must go on an unpaid leave of absence, if eligible, or return to work.

20-3 Personal Business Leave

Extended leaves for personal business may be granted in extreme cases; however, it will be with loss of pay and shall not exceed thirty (30) days. At the end of this period he/she must go on an unpaid leave of absence, if eligible, or return to work.

20-4 Public Office Leave

Teachers elected to public office shall be granted released time with loss of pay when the duties of public office conflict with teacher's regular assignment.

ARTICLE TWENTY-ONE

Fringe Benefits

21-1 Amount and Type

A. The District shall provide each full-time employee with $500.00 to be used for insurance. This shall be used to pay for single coverage medical insurance.

B. If the employee does not choose medical insurance, the employee shall have the option of choosing life insurance.

C. If necessary, payroll deduction will be made available upon request to any teacher for any of the following insurances:

Life insurance

Income protection

Dental insurance

Optical insurance

Payroll deduction will also be made available for United Way contributions.

21-2 Insurance Committee

Any future changes in the District's medical and health insurance program

will be recommended by an insurance committee. This committee shall consist of eleven (11) members, five (5) appointed by the Association and six (6) appointed by the District.

ARTICLE TWENTY-TWO

Extra Duty Pay Schedule

22-1 High School

Definition: An extra duty is any supervision of students outside the normal work day and/or any District required participation in continuing programs outside the normal work day and/or the following extra duties.

Any teacher performing the following extra duties shall be paid the salary listed below.

Extra Duty	Index on BA Degree
Sports	
Manager of Inter-scholastic Activities	.12
Basketball	.10
Football	.10
Baseball	.08
Softball	.08
Intramural (full-time)	.08
Swimming (Boy's/Girl's combined team)	.08
Track	.08
Wrestling	.08
Gymnastics	.07
Swimming	.07
Tennis	.07
Volleyball	.07
Assistant Coach	.06

Cross Country (Boy's/ Girl's combined team)	.06
Cross Country	.05
Golf	.05

All high school coaches shall be granted an extra coaching period during their coaching season.

Extra Duty	Index on BA Degree
Service	
Dept. Chairperson (66-100 classes)	.09
Songleader	.08
Cheerleader	.08
Drill Team	.08
Dept. Chairperson (31-65 classes)	.07
Student Council	.06
Newspaper	.06
Yearbook	.06
Debate/Speech	.05
Head Librarian	.04
Dept. Chairperson (5-15 classes)	.04
Class Sponsor	.03
Club Sponsor	.03
Fine Arts	
Band	.08
Dramatics	.06
Dance	.04
Orchestra	.04
Vocal Music	.04
District Required Travel	17¢/mile - or no less than any other District employee

All other extra duty responsibilities shall be paid and equitably assigned to

volunteers if possible. If volunteers are not available, assignments will be equitably distributed.

Student Supervision Outside the Normal Work Day (except as listed below)	$7.00 /hour
Loss of Planning Period	$11.00 /period
Driver Training (behind the wheel)	$7.00 /hour

22-2 Junior High School

Definition: An extra duty is any supervision of student outside the normal work day and/or any District required participation in continuing programs outside the normal work day and/or the following extra duties.

Any teacher performing the following extra duties shall be paid the salary listed below.

Extra Duty	Index on BA Degree
Sports	
Basketball	.05
Intramural (full-time)	.05
Track	.05
Volleyball	.05
Service	
Songleader/Cheerleader	.02
Student Council	.03
Newspaper	.02
Yearbook	.02
Club Sponsor	.02
Safety Patrol	.03

District Required Travel	17¢/mile - or no less than any other District employee

All other extra duty responsibilities shall be paid and equitably assigned to volunteers if possible. If volunteers are not available assignments will be equitably distributed.

Student Supervision Outside the Normal Work Day (except as listed below)	$7.00/hr.
Loss of Planning Period	$11.00/ period
Lunchroom Duty	$7.00/hr.
Bus Duty	$7.00/hr.
Playground supervision (preschool, lunch time, after school)	$7.00/hr.

Acting principals (teachers) are to receive their regular teachers salary, a substitute if acting for the principal for one-half (½) day or more, plus up to five (5) days compensatory time for time served in this capacity.

22-3 Elementary School

Definition: An extra duty is any supervision of students outside the normal work day and/or any District required participation in continuing programs outside the normal work day and/or the following extra duties.

Any teacher performing the following extra duties shall be paid the salary listed below.

Extra Duty	Index on BA Degree
Safety Patrol	.03
Vocal Music	.025
District Required Travel	17¢/mile - or no less than any other District employee

All extra duty responsibilities shall be paid and equitably assigned to volunteers if possible. If volunteers are not available, assignments will be equitably distributed.

Student Supervision Outside the Normal Workday (except as listed above)	$7.00/hr.
Loss of Planning Period	$11.00/ period

Acting principals (teachers) are to receive their regular teachers salary, a substitute if acting for the principal for one-half (½) day or more, plus up to five (5) days compensatory time for time served in this capacity.

ARTICLE TWENTY-THREE

Salary

1980-81 Probationary Salary Schedule
July 1, 1980 -- June 30, 1981

Years	BA	BA+15	BA+30	MA or BA+45	MA+15	MA+30
1	12050	12201	12351	12502	12653	12803
1.5	12201	12351	12502	12653	12803	12954
2.0	12351	12502	12653	12803	12954	13104
2.5	12502	12653	12803	12954	13104	13255
3.0	12653	12803	12954	13104	13255	13406
3.5	12803	12954	13104	13255	13406	13556
4.0	12954	13104	13255	13406	13556	13707
4.5	13104	13255	13406	13556	13707	13858
5.0	13255	13406	13556	13707	13858	14008
5.5	13406	13556	13707	13858	14008	14159
6.0	13556	13707	13858	14008	14159	14309
6.5	13707	13858	14008	14159	14309	14460
7.0	13858	14008	14159	14309	14460	14611

Years	MA+45	MA+60 or Ed. Earned Doctorate
1	12954	13104
1.5	13104	13255
2.0	13255	13406
2.5	13406	13556
3.0	13556	13707
3.5	13707	13858
4.0	13858	14008
4.5	14008	14159
5.0	14159	14309
5.5	14309	14460
6.0	14460	14611
6.5	14611	14761
7.0	14761	14912

ARTICLE TWENTY-THREE

Salary

1980-81 Regular Salary Schedule
July 1, 1980 - June 30, 1981

Years	BA	BA+15	BA+30	MA or BA+45	MA+15	MA+30
4.0	13878	14268	14658	15047	15437	15827
4.5	14268	14658	15047	15437	15827	16246
5.0	14658	15047	15437	15827	16246	16666
5.5	15047	15437	15827	16246	16666	17086
6.0	15437	15827	16246	16666	17086	17505
6.5	15827	16246	16666	17086	17505	17925
7.0	16246	16666	17086	17505	17925	18345
7.5	16666	17086	17505	17925	18345	18764
8.0	17086	17505	17925	18345	18764	19184
8.5	17505	17925	18345	18764	19184	19604
9.0	17925	18345	18764	19184	19604	20023
9.5	18345	18764	19184	19604	20023	20473
10	18764	19184	19604	20023	20473	20923
10.5				20473	20923	21372
11.0				20923	21372	21823
11.5				21372	21823	22271
12.0				21823	22271	22721
12.5				22271	22721	23171
13.0				22721	23171	23620

Years	MA+45	MA+60 or Ed. Earned Doctorate
4.0	16246	16666
4.5	16666	17086
5.0	17086	17505
5.5	17505	17925
6.0	17925	18345
6.5	18345	18764
7.0	18764	19184
7.5	19184	19604
8.0	19604	20023
8.5	20023	20473
9.0	20473	20923
9.5	20923	21372

10	21372	21823
10.5	21823	22271
11.0	22271	22721
11.5	22721	23171
12.0	23171	23620
12.5	23620	24100
13.0	24100	24580

ARTICLE TWENTY-THREE

TUSD Salary Indexes

Years	Reg. Sal. Sch. Ind.	Pro. Sal. Sch. 1st yr. 80-81	Pro. Sal Sch. 2nd yr. 81-2
1.0	1.00	1.00	1.00
1.5	1.025	1.0125	1.02
2.0	1.05	1.025	1.04
2.5	1.075	1.0375	1.06
3.0	1.10	1.05	1.08
3.5	1.125	1.0625	1.10
4.0	1.1575	1.075	1.12
4.5	1.190	1.0875	1.14
5.0	1.2225	1.10	1.16
5.5	1.255	1.1125	1.18
6.0	1.2875	1.125	1.21
6.5	1.32	1.1375	1.24
7.0	1.355	1.15	1.27
7.5	1.390	1.1625	1.30
8.0	1.425	1.175	1.33
8.5	1.460	1.1875	1.36
9.0	1.495	1.20	1.39
9.5	1.530	1.2125	1.42
10.0	1.565	1.225	1.45
10.5	1.6	1.2375	1.48
11.0	1.635		
11.5	1.670		
12.0	1.7075		
12.5	1.745		
13.0	1.7825		
13.5	1.820		
14.0	1.8575		

14.5	1.895
15.0	1.9325
15.5	1.970
16.0	2.010
16.5	2.050

ARTICLE TWENTY-THREE

Salary

23-1 Salaries

A. The 1979-80 salary schedules will be increased by a 10.5% base salary for 1980-81. In addition, the probationary schedule will be indexed in accordance with the attached schedule.

B. For 1981-82 the salary schedules will be increased by at least an 8% base increase, but no more than a 10% base increase. In addition, the probationary schedule index will be improved over the 1980-81 index as indicated in the attached schedule. If the Consumer Price Index increases by more than 8%, the base salary increases will be adjusted upward at the rate of a 1% increase in base salary for every 2% increase in the Consumer Price Index.

C. For the purpose of this article the Consumer Price Index referred to will be the U.S. Department of Labor Index for all items for all Urban Consumers. The reporting period from which the increase will be calculated shall be from February to February.

D. There shall be no probationary salary schedule for 1982-83.

23-2 Longevity Bonus

Length of service beyond the years covered by the schedule of salaries shall be recognized by adding to the teacher's salary the following appropriate bonus:

Years of Service	1980-81 Amount
21-30	225
31-40	450
41 or over	675

23-3 Schedule Placement

A. All teachers shall be placed in the Teachers Salary Schedule by moving down the "experience step" column to the number of years they are credited and then moving horizontally on the schedule to the appropriate education level column.

B. A teacher who has worked in this District for one-half plus one (1) days or more of the total days on duty for teachers per the official school calendar, shall be advanced one (1) full step on the salary schedule for the following year. If employment has been for one-half (½) or less, but more than one-fourth (¼) of total days on duty for teachers per the official school calendar, the teacher shall advance one-half (½) step for the following year.

23-4 Experience Credit

A. Teachers employed will be given credit on the salary schedule for each year of previous teaching

experience. Acceptable experience is limited to that gained within the last ten (10) years or which ran into the decade immediately preceding employment with this system. Teaching experience prior to earning a bachelor's degree and certification will not be credited to an employee for salary purposes.

B. Credit shall be given for teaching experience in the Peace Corps, overseas, in private and in public schools. Tucson Unified School District reserves the right to evaluate previous teaching and work experience. Vocational teachers with degrees will also be allowed credit for approved work experience in their teaching fields. Social workers will receive credit for previous teaching experience and for experience gained prior to meeting minimum certification requirements (master's degree) but subsequent to receipt of the bachelor's degree.

C. Teachers shall be placed on the schedule in accordance with their total accumulated experience, both in-district and out-of-district.

23-5 Educational Credit

A. Teachers employed with be given credit on the salary schedule for educational units earned in accordance with the following provisions. When a teacher has acquired sufficient units to qualify for a salary adjustment, he/she should secure transcripts of the courses taken and send them to the Personnel Department. Transcripts must not be submitted until sufficient units have been

accumulated to affect the salary. Official transcripts covering work taken toward advancement on the salary schedule must be submitted to the Personnel Department no later than November 1, if completing requirements for salary adjustment. Any semester hours counted on the fifteen (15), thirty (30), or forty-five (45) above the bachelor's degree must have been completed after the awarding of the degree. All work counted in advancing to the next salary lane for education credit must have been taken within a ten (10) year span of time.

B. If an employee holding an elementary certificate wishes to qualify for a secondary certificate, or vice versa, the courses required would be accepted as additional hours. Hours above the master's must have been taken after the awarding of the master's degree or when the requirements for such degree have been completed and certified as such by the university or college. Teachers with an MA degree from a program requiring thirty-two (32) semester hours shall be placed on the MA column. Teachers with an MA degree from a program requiring forty-five (45) semester hours shall be placed on the MA+15 column. Teachers with an MA degree from a program requiring sixty (60) semester hours shall be placed on the MA+30 column.

C. The District reserves the right to evaluate educational units used to qualify for a salary adjustment. Courses approved must be in education, behavioral sciences, or in fields that contribute to the

teaching assignment and must be completed before the beginning of the school year. No advancement on the salary will be allowed for college credits earned by examination except when this is done at the request of the school district.

D. For advancement on the salary schedule, there will be no District imposed limit on the number of hours credit obtained during the school year.

23-6 Pay Plan Procedure

A. the teacher shall have the option of selecting one (1) of two (2) pay plans:

(1) Every other Friday during the school year--twenty equal checks.

(2) Twenty-six (26) equal amounts -- twenty (20) to be paid every other Friday during the school year and the remainder paid in a lump sum at the end of the school year.

B. Teachers may choose automatic deposits of their paycheck to Tucson Teachers Federal Credit Union.

23-7 New Contracts

Contracts reflecting additional salary credits will be updated as soon as practical and reissued to the teacher.

23-8 Extended Contracts

A. In the event the number of days in a teachers contract is extended

that teacher shall be paid at the daily rate of 1/202 his/her scheduled salary per additional day. Teachers on an extended contract shall receive all holidays and benefits received by teachers during the school year.

B. All counselors shall have five (5) additional days added to their school year. These days will be applied toward five (5) days compensatory time during the regular school year.

ARTICLE TWENTY-FOUR

No Reprisals

24-1 Board Reprisals

The Board hereby terminates with prejudice all legal and court actions against the TEA, AEA, or NEA associated with the strike against the District October 2-6, 1978. Neither the Board nor its supervisory employees shall engage in any reprisals against the TEA, NEA, AEA and persons involved in the controversy by reason of any strike action before October 8, 1978.

24-2 TEA Reprisals

By reason of any activity or event on or before October 8, 1978, there shall be no reprisals by the TEA, AEA and NEA against TUSD of Pima County, AZ and/or any persons involved in the strike against the District October 2-6, 1978.

ARTICLE TWENTY-FIVE

Staffing

25-1 Libraries

Stay at current staffing ratios.

ARTICLE TWENTY-SIX

Waiver

26-1 During the term of this Agreement, the Association and the District expressly waive and relinquish the right to negotiate with each other and neither party shall be obligated to negotiate with each other with respect to any subject or matter whether or not referred to or covered in this Agreement, except as specifically provided in this Agreement or by mutual consent of the parties.

ARTICLE TWENTY-SEVEN

No Strike

27-1 The Association hereby agrees that neither it nor its members, officers or representatives shall initiate or support any strike slowdown or refusal to perform assigned duties by members of the bargaining unit. The Association and its officers and representatives will do everything reasonable within their power to end or avert the same. This provision shall be in effect during the life of this Agreement.

Office-Supreme Court, U.S.
FILED
JAN 10 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1006

In The
Supreme Court of the United States
October Term, 1984

JOHN W. WILLIAMS and WINIFRED WILLIAMS, husband and wife,

Petitioners,

vs.

TUCSON UNIFIED SCHOOL DISTRICT NO. 1 OF PIMA COUNTY, a political subdivision of the State of Arizona; and TUCSON EDUCATION ASSOCIATION, an Arizona corporation,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

RESPONDENT, TUCSON EDUCATION ASSOCIATION'S, BRIEF IN OPPOSITION

ALEX A. GAYNES, Esq.
LAW OFFICE OF ALEX A. GAYNES
2438 East Broadway
Tucson, Arizona 85719
(602) 792-4983
Attorney for Respondent
Tucson Education Association

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

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STATEMENT OF THE CASE

John W. Williams was, at the time he filed his lawsuit in the Pima County, Arizona Superior Court, a teacher employed by the Tucson Unified School District No. 1 of Pima County, Arizona. He was not a member of the Tucson Education Association. Tucson Education Association was the labor organization representing employees.

Though Mr. Williams was never a member of the Tucson Education Association, "his employment contract bound him to the rules in the Consensus Agreement". The Consensus Agreement was a document entered into between the Tucson Education Association representing the teachers employed by the Tucson Unified School District, and the Tucson Unified School District. This Consensus Agreement contained procedures for the filing and consideration of grievances, and additionally included many rules and regulations, none of which are applicable in the instant case.

This dispute centers around the grievance procedures set forth in the "Consensus Agreement".

The Consensus Agreement provided a procedural method for processing and reviewing grievances through various stages up the administrative ladder.

The grievance procedure further requires that any grievance be raised within fifteen working days from the occurrence of the alleged violation. As the Consensus Agreement provides in paragraph 5-3:

> "A teacher with a complaint will first present it orally and informally to the immediate supervisor within fifteen (15) working days from the occurrence of the alleged violation, or fifteen (15) working days

from the time the alleged violation is known to the teacher or the Association."

Mr. Williams filed nine grievances. Grievances numbers 1 and 2 requested that Mr. Williams' principal be made to apologize to Mr. Williams because of a remark in one instance, and an unanswered letter in another instance. The remark allegedly occurred in October, 1979, and the failure to answer a letter occurred in July or August, 1980. Neither grievance was filed within the fifteen (15) day time limit, but were in fact, filed more than four months after the latest event.

Grievance number 3 centered around an issue of compensatory time which was resolved by the District.

Grievances numbered 4 and 5 allege that on October 20, 1980, Mr. Williams was removed from his duty as a cafeteria supervisor. This item was not made the subject of any grievance until January 23, 1981, some five months and three days later. Grievances numbered 6 and 7 included allegations that Mr. Williams was denied meaningful opportunities to coach the freshman boys basketball team, and the girls varsity basketball team. These alleged infringements on his rights occurred on August 20, 1980, and no grievance was filed until well after the positions were filled and each of the seasons had begun. These grievances were filed on January 29, 1981, months after the alleged violations. Grievance number 8 centered around the assignment of Mr. Williams as a "permanent substitute". The policy of permanent substitutes was changed by the School District, thereby alleviating the claim.

Grievance number 9 was the only even arguably, timely filing based on a claim that the principal of the school "demoralized" Mr. Williams by yelling at a different individual.

In his deposition, Mr. Williams admitted that he knew of the time periods but ignored them because "he didn't feel like it". Deposition, page 73, ll. 21-23; pp. 100 through 101; p. 19, ll. 3-4; p. 19, ll. 8-12; p. 100, l. 25; p. 101, ll. 1-11. Further other portions of Mr. Williams' testimony at his deposition while under oath are as follows:

At page 22, lines 24-25:

"Q. You're aware in 1979 there was a grievance procedure in the Consent Agreement?"

Page 23, lines 1-5:

"A. Well, I just looked over the book, I was aware, yeah.

Q. You knew there was a grievance procedure in October, 1979?

A. Yeah. The answer is yes."

Referring to grievance number one, page 34, lines 18-25:

"Q. You knew that the conversation of October 2, 1979, was more than fifteen days—working days—before the time you started the grievance procedure in 1981. Is that true?

A. Oh, yes, yes, uh-huh.

Q. So you knew that the grievance was not being filed within the fifteen working days?

A. Yes."

Referring to grievance number two, page 48:

"Q. The question is, do you agree that you filed the grievance number two outside the fifteen days period?

A. Yeah, yes, uh-huh, yes."

Referring to grievance number three, page 55, lines 7-12:

"Q. And at the time on January 23, 1981, when you talked to Mr. Carrillo about the comp time practice as explained by Mr. Ingersoll on August 20, 1981, you knew that more than fifteen days had elapsed since Mr. Ingersoll told you that, is that correct?

A. Yeah, uh-huh."

Referring to the grievance regarding cafeteria supervisory duty at page 63, lines 19-24:

"Q. But you didn't start the grievance procedure until January 23, 1981, is that correct?

A. That's correct.

Q. And that's greater than fifteen days after August 20, is that correct?

A. That's correct."

Again referring to the cafeteria duty at page 73, lines 21-23:

"Q. Why didn't you file a grievance on the cafeteria duty?

A. Well, I didn't feel like it."

Referring to grievance number five, page 74, lines 1-9:

"Q. Excuse me, why didn't you feel like filing a grievance?

A. Because when he took me out of my counseling job, made me a substitute teacher, when I had to teach all those other classes, I had to teach English, Social Studies, Math, sometimes P.E., Art, lead the band, and all that stuff, that's when I really got mad. That's why. So I just unloaded all of them at the same time. That's why."

Referring to the grievance regarding the freshman boy's basketball team, page 92, lines 22-24:

"Q. You knew about the fifteen day time limit on August 20, 1980?

A. Yeah."

Page 19, lines 3-12:

"Q. Why didn't you file a grievance then?

A. I didn't feel like it at the time.

Q. Why?

A. Why?

Q. Why?

A. Just because I didn't, that's why.

Q. And no other reason?

A. That's my reason.

Q. Just because?

A. That's my reason."

Referring to comp time/demoralization grievance on August 1, 1979, and cafeteria grievance, page 100, line 25, page 101, lines 1-11:

"Q. Thank you. On October 15, you knew that Mr. Carrillo demoralized you on October 1, 1979. You knew on that date that he had not answered your letter by August 20, 1980. You know that comp time practices had been reported to you by Mr. Ingersoll were different than what you thought they were. You knew that the cafeteria duty was removed from you. Why didn't you file any grievances at that point in time?

A. I didn't feel like it.

Q. But you knew you had a fifteen day time limit from that time—

A. Yes.

Q. —an event occurred to the time you filed your grievance, is that correct?"

Presented to the Trial Court were affidavits of Ralph Baker, Elaine Caret, Joyce Drake, Bill Goettsch, Arthur Kindelar, Judith Krelleff, William Lamson, Geraldine MacKaben, Marian Pickett, Linda Pair-Roberts, Randall Smith, Judy Stewart, and John Irvin which, without contradiction by Mr. Williams or anyone on his behalf, showed that neither Mr. Williams' membership or non-membership status in the Tucson Education Association played any part of the discussions of any participants in the decisions concerning Mr. Williams' grievances. One of the reasons for summary judgment against Mr. Williams was that it was unequivocally shown that Mr. Williams was treated in the same fashion as any other teacher would have been treated whether or not the individual was or was not a member of the Tucson Education Association.

———o———

ARGUMENT

It is difficult to respond to the allegations and positions taken by Mr. Williams, because the positions have been taken in a scatter gun type approach, and none of the allegations contain any degree of specificity. There is little focus to any of the allegations.

The Petition raises no substantial Federal legal grounds for a decision by this Court. In addition, a brief reading of Petitioner's own pleadings show that ample and adequate independent State grounds for relief

were present, and preclude certiorari. *Orr v. Alabama,* 440 U.S. 268, 99 S.Ct. 1102, 59 L.Ed.2d 306 (1979); *Zacchini v. Scripts-Howard Broadcasting Co.,* 433 U.S. 562, 97 S.Ct. 2489, 53 L.Ed.2d 1965 (1977).

. . . "The risk of an erroneous depravation" and "the degree of potential depravation" do not raise this case even to the level rejected in *Hortonville Joint School District No. 1 v. Hortonville Education Association,* 426 U.S. 482, 495, 96 S.Ct. 2308, 49 L.Ed.2d 1, 10 (1976).

Petitioner's pleadings in this Court blithely skip over the issue of timeliness by arguing that the grievances were "continuing in nature and therefore timely". Petition for Writ of Certiorari, at page 10. However, the Arizona Court of Appeals found to the contrary. The Arizona Court of Appeals in its Opinion (found on page A-12 of Appendix A of the Petition for Writ of Certiorari) includes the following language:

> "The Appellant's contract containing the grievance procedures which he utilized required him to observe certain specified time limits for the filing of a grievance. Thus, at level one he was obliged to file within fifteen working days. Except for grievances 8 and 9, none were filed within anywhere close to that time."

Grievance 8, as mentioned in the Statement of Facts, is moot, grievance 9 requested that the Tucson Unified School District take action against the principal who made a remark to another individual.

The Court found the timeliness issue to be, in and of itself, a sufficient reason for denying the grievances.

It is also conceded and has been conceded by Mr. Williams and his counsel that Mr. Williams was treated

respectfully, and his positions reviewed by the Tucson Education Association fairly and completely. In fact, Mr. Williams does not even question the fact that the Executive Director of the Tucson Education Association presented Mr. Williams' side of the case to the Executive Board of the Tucson Education Association in a fair and equitable manner. The affidavits referred to previously showed that the decision on whether to proceed with Mr. Williams' grievances was based on the merits of those grievances, and on no other factors.

Not only that, the Tucson Education Association provided Mr. Williams and his attorney with the chance to speak to the issues raised in his grievances. Parenthetically, it should be noted that the first time that allegations concerning "continuing grievances" were raised occurred in the Superior Court, no such issue or arguments being raised administratively.

In fact, throughout the record of this case, there is not one way in which Mr. Williams can point to the Tucson Education Association as breaching any perceived duties of fairness to him. His prime function when boiled down to its essential seems to be, "they did not let me go to arbitration, therefore, they have breached all manner of duties to me." The Trial Court, the Arizona Court of Appeals, and the Arizona Supreme Court properly found that there were no issues of fact remaining, and that extensive discovery showed no action on behalf of the Tucson Education Association which even could be classified as "negative".

Throughout the proceedings, there is not one perceived event that can be shown to be arbitrary, discrim-

inatory, or in bad faith. The Arizona Courts have rejected Mr. Williams' attempts to have his claims determined to be endless, continuing complaints and therefore subject to review ad infinitum. In any event, this decision was a matter of State law, and raises no substantial Federal question.

In Arizona, prior to raising an issue in the Courts, an individual must exhaust his administrative remedies. The Arizona Courts have so held in *Campbell v. Mountain States Telephone,* 120 Ariz. 426, 586 P.2d 987. Mr. Williams simply failed to properly raise the issues administratively in proper fashion, so that his purported constitutional claims, and other assertions simply are not ripe for adjudication in the highest Court in the land.

It is uncontroverted that Mr. Williams ignored the grievance procedures, and that any failure to present anything was his own fault. He now asks the highest Court in our land to review adverse activity which was caused because Mr. Williams "didn't feel like" pressing grievances. It is axiomatic that litigants must first raise Federal issues in State Courts in such a format as to ripen the issues sufficient for fair adjudication.

Perhaps, the Arizona Court of Appeals stated it best when they noted as follows:

> "Thus, not only do we believe summary disposition in the Trial Court was proper, we find this appeal to be frivolous. From our examination of the record, it appears that the appellants are attempting to use the Courts to somehow redress alleged wrongs for which they have no legal or equitable remedy. For example, Grievance No. 1 sought to order an apology from the principal. Although the prayer of his complaint does not seek such an apology, it does pray

> for an order requiring TUSD 'to insure that the conduct of its agents and employees toward him is professional and courteous.' Our courts do not exist for that kind of purpose. *See* Annotation in 47 A.L.R. 2d 319 discussing the maxim 'de minimus non curat lex,' the law does not concern itself with trifles. The same can be said of any relief claimed in the complaint because of Grievance No. 2, the failure to answer his letter; Grievance No. 8, his assignment as a 'permanent substitute'; and Grievance No. 9."

As to the issues of timeliness, the Arizona Court of Appeals noted as follows:

> "It is inconceivable that the appellant can contend that this court should order TUSD to now pay him for a part-time supervisory position from August 1980, give him the position of freshman boys' basketball Coach with pay from August 1980, and also make him head girls' varsity basketball coach at the same time. These positions were filled before his grievances were filed."

Mere subjective expectancies without substance do not reach the level of due process protection. *Perry v. Sindermann*, 408 U.S. 593, 603 (1972).

Respectfully submitted,

ALEX A. GAYNES, Esq.
LAW OFFICE OF ALEX A. GAYNES
2438 East Broadway
Tucson, Arizona 85719
(602) 792-4983
Attorney for Respondent
Tucson Education Association